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GARRISON DIVERSION UNIT REFORMULATION ACT OF 1986

APRIL 9, 1986.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 1116]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 1116) to implement certain recommendations made pursuant to Public Law 98-360, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PURPOSE AND AUTHORIZATION.

The first section of the Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended by striking out "That" and all that follows down through the period at the end of such section and substituting:

"SECTION 1. (a) The Congress declares that the purposes of this Act are to:

"(1) implement the recommendations of the Garrison Diversion Unit Commission Final Report (dated December 20, 1984) in the manner specified by this Act;

"(2) meet the water needs of the State of North Dakota, including municipal, rural and industrial water needs, as identified in the Garrison Diversion Unit Commission Final Report;

"(3) minimize the environmental impacts associated with the construction and operation of the Garrison Diversion Unit;

"(4) assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909;

"(5) assure more timely repayment of Federal funds expended for the Garrison Diversion Unit;

"(6) preserve any existing rights of the State of North Dakota to use water from the Missouri River; and,

"(7) offset the loss of farmland within the State of North Dakota resulting from the construction of major features of the Pick-Sloan Missouri Basin Program, by means of a Federally-assisted water resource development project providing irrigation for 130,940 acres of land.

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"(b) The Secretary of the Interior (hereafter referred to as "the Secretary") is authorized to plan and construct a multi-purpose water resource development project within the State of North Dakota providing for the irrigation of 130,940 acres, municipal, rural, and industrial water, fish and wildlife conservation and development, recreation, flood control, and other project purposes in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and substantially in accordance with the plans set out in the Garrison Diversion Unit Commission Final Report dated December 20, 1984.

"(c) Nothing in this Act is intended, nor shall be construed, to preclude the State of North Dakota from seeking Congressional authorization to plan, design, and construct additional Federally-assisted water resource development projects in the future.

"(d) Nothing in this Act shall be deemed to diminish the quantity of water from the Missouri River which the State of North Dakota may beneficially use, pursuant to any right or rights it may have under federal law existing immediately before the date of enactment of this Act and consistent with the treaty obligations of the United States.

"(e) The authorization for all features of the Missouri-Souris Unit of the Pick-Sloan Missouri Basin Program located in the State of North Dakota, heretofore authorized in section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 891), for which no funds have been appropriated for construction, and which are not authorized for construction by this Act, is hereby terminated, and sections 1 and 6 of the Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) are hereby repealed.

"(f) In implementing the provisions of this Act, the Secretary is directed to construct all supply works to the capacity identified in the Garrison Diversion Unit Commission Final Report, except that the Secretary is directed to construct the James River Feeder Canal to a capacity of no more than 450 cubic feet per second, and the Sykeston Canal to the capacity specified in Section 8(a)(1) of this Act.

"(g) Any investment related to features constructed by the Secretary that are no longer employed to full capacity pursuant to the recommendations of the Garrison Diversion Unit Commission Final Report shall be nonreimbursable.".

SEC. 2 FISH AND WILDLIFE.

Section 2 of the Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended by adding the following new subsections at the end thereof:

"(i) Notwithstanding any other provisions of this section, the mitigation for fish and wildlife losses incurred as a result of construction of the project shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

"(j) The Secretary is directed to implement the provisions of the Garrison Diversion Unit Commission Final Report with respect to fish and wildlife conservation, including habitat impacts, mitigation procedures, and enhancement, except for the following:

"(1) The Secretary shall take no action to alter the status of Sheyenne Lake National Wildlife Refuge prior to the completion of construction of Lonetree Dam and Reservoir.

"(2) Development and implementation of the mitigation and enhancement plan for fish and wildlife resources impacted by construction and operation of the Garrison Diversion Unit shall not be limited by the cost constraints based on estimates contained in the Garrison Diversion Unit Commission Final Report.

"(3) Credit toward mitigation recommended by the Garrison Diversion Unit Commission Final Report for reservoir sites is not authorized.".

SEC. 3. IRRIGATION FACILITIES.

Section 5 of the Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended to read as follows:

"SEC. 5. (a)(1) Subject to the provisions of subsection (a)(2) of this section, the Secretary is authorized to develop irrigation in the following project service areas: Turtle Lake (13,700 acres), McClusky Canal (4,000 acres), Lincoln Valley (6,515 acres), Harvey Pumping (2,000 acres), New Rockford (20,935 acres), New Rockford Canal (1,200 acres), LaMoure (13,350 acres), West Oakes Extension (4,000 acres) and West Oakes (19,660 acres). The Secretary is prohibited from developing irrigation in these areas in excess of the acreage specified herein, except that the Secretary is authorized and directed to develop up to 28,000 acres of irrigation in other areas in North Dakota, not located in the Hudson Bay, Devils Lake, or James River drainage basins.

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"(2) The Secretary is prohibited from obligating any funds for construction of irrigation service facilities in the areas listed in subsection (a)(1) of this section prior to September 30, 1990. After that date, the Secretary may obligate funds only after completing and submitting to the Congress, the report required by section 5(c) of this Act.

"(b)(1) The Secretary may not commence construction of the Sykeston Canal, the James River Feeder Canal, and James River channel improvements until the report required by Section 5(c) of this Act has been completed and submitted to the Congress.

"(2) The Secretary is directed to proceed immediately with the construction of—

"(A) the New Rockford Canal;

"(B) the Oakes Test Area; and

"(C) project features authorized in Section 7 of this Act.

"(c)(1) The Secretary is directed to submit a comprehensive report to the Congress as soon as practicable, but not later than the end of fiscal year 1988 on the effects on the James River in North Dakota and South Dakota of water resource development proposals recommended by the Garrison Diversion Unit Commission and authorized in this Act. The report shall include the findings of the Secretary with regard to:

"(A) the feasibility of using the Oakes Aquifer as a water storage and recharge facility, and an evaluation of the need for offstream regulatory storage in the lower James River basin;

"(B) the capability of the river to handle irrigation return flows, project water supplies, and natural runoff without causing floodings, property damage, or damage to wildlife areas, and mechanisms or procedures for compensation or reimbursement of affected landowners for damages from project operation;

"(C) the impacts of Garrison Diversion Unit irrigation return flows on the river and on adjacent riverine wetland areas and components of the National Wildlife Refuge System, with regard to water quantity, water quality, and fish and wildlife values;

"(D) the need for channelization of the James River under the irrigation and municipal, rural, and industrial water development programs authorized by this Act;

"(E) the cost and efficiency of measures required to guarantee that irrigation return flows from the New Rockford (Robinson Coulee) irrigation service areas will not enter the Hudson Bay drainage and the impact these return flows will have on the James River;

"(F) the feasibility of conveying project flows into the lower James River via Pipestem Creek; and

"(G) alternative management plans for operation of Jamestown and Pipestem Reservoirs to minimize impacts on the lower James River.

"(2) The costs of the study authorized by this subsection shall be nonreimbursable.

"(3) The study authorized by this subsection shall be carried out in accordance with the requirements of the National Environmental Policy Act.

"(d) The Secretary is prohibited from obligating funds to construct irrigation facilities in the service areas listed in subsection (a)(1) until a contract or contracts, in a form approved by the Secretary, providing for the appropriate payment of the costs allocated to irrigation have been properly executed by a district or districts organized under State law. Such contract or contracts shall be consistent with the requirements of the Reclamation Reform Act of 1982 (Title II, P.L. 97-293, 96 Stat. 1263).

"(e) The Secretary is authorized to develop irrigation in the following project service areas within the boundaries of the Fort Berthold and Standing Rock Indian Reservations: Lucky Mound (7,700 acres), Upper Six Mile Creek (7,500 acres), and Fort Yates (2,380 acres), except that, no funds are authorized to be appropriated for construction of these projects until the Secretary has made a finding of irrigability of the lands to receive water as required by the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. 390a). Repayment for the units authorized under this subsection shall be made pursuant to the Leavitt Act (25 U.S.C. 386a).

"(f) The Secretary shall not permit the use of project facilities for non-project drainage not included in project design or required for project operations.".

SEC. 4. POWER.

Section 6 of the Act of August 5, 1965 (P.L. 89-108 (79 Stat. 433)), is amended to read as follows:

"SEC. 6. (a) Municipal, rural, and industrial water systems constructed with funds authorized by section 7 of this Act shall utilize power from the Pick-Sloan Missouri

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Basin Program, as established by section 9 of the Flood Control Act of 1944 (Act of December 22, 1944), for the operation of such systems.

"(b) Notwithstanding the provisions of section 302(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7152(a)(3)), any portion of the costs properly chargeable to irrigation for the Garrison Diversion Unit which are beyond the ability of water users to repay as authorized by Reclamation law may be repaid from power revenues, except repayment of investment in irrigation for the Garrison Diversion Unit made after the date of enactment of this Act may not exceed forty years from the year in which irrigation water is first delivered for use by the contracting party and shall be made in equal annual installments.

"(c) Pursuant to the provisions of the last sentence of section 302(a)(3) of the Department of Energy Organization Act of 1978 (42 U.S.C. 7152(a)(3)), any reallocation of costs to project purposes other than irrigation as a result of section 1(e) of this Act shall not result in increased rates to Pick-Sloan Missouri Basin Program customers unless; (1) full use has been made of the current development method of ratesetting in analyzing the repayment status and cost allocations for the Garrison Diversion Unit and (2) the resulting rate increase, in any, is made in equal amounts over the ten year period beginning on the date of any such reallocation pursuant to this Act. Costs reallocated to project purposes other than irrigation as a result of section 1(e) of this Act shall be repaid, if reimbursable, with interest at the rate specified in section 4(b) of this Act beginning on the date of any such reallocation without retroactive interest. Nothing in this Act shall alter or affect in any way the current repayment methodology for other features of the Pick-Sloan Missouri Basin Program.".

SEC. 5. MUNICIPAL, RURAL, AND INDUSTRIAL WATER SERVICE.

The Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"SEC. 7. (a)(1) The Secretary of the Interior is authorized to construct municipal, rural, and industrial water systems to serve areas throughout the State of North Dakota.

"(2) All planning, design, construction and operation of the municipal, rural, and industrial water systems authorized by this section shall be undertaken in accordance with a cooperative agreement between the Secretary and the State of North Dakota. Such cooperative agreement shall set forth in a manner acceptable to the Secretary the responsibilities of the State for:

"(A) needs assessments;

"(B) feasibility studies;

"(C) engineering and design;

"(D) construction;

"(E) operation and maintenance; and,

"(F) the administration of contracts pertaining to any of the foregoing.

"(3) Upon execution of the cooperative agreement required under this subsection, the Secretary is authorized to convey to the State of North Dakota, on a nonreimburseable basis, the funds authorized in section 10(b)(1) of this Act. The non-Federal share of the total cost of construction of each water system for which the State of North Dakota receives funding pursuant to this section shall be 25 percent, committed prior to the initiation of construction. The non-Federal share of the cost of operation, maintenance, and replacement of each municipal, rural, and industrial water system funded by this section shall be 100 percent. The Southwest Pipeline Project shall be deemed to be eligible for funding under the terms of this section.

"(b) The Secretary is authorized and directed to construct, operate, and maintain a Sheyenne River water supply and release feature (including a water treatment plant) capable of delivering 100 cubic feet per second of water for the cities of Fargo and Grand Forks and surrounding communities. The costs of the construction, operation, maintenance, and replacement of this feature, exclusive of conveyance, shall be nonreimbursable and deemed attributable to meeting requirements of the Boundary Waters Treaty of 1909.

"(c) The Secretary is authorized and directed to construct, operate, and maintain such municipal, rural, and industrial water systems as he deems necessary to meet the economic, public health and environmental needs of the Fort Berthold, Standing Rock, and Fort Totten Indian Reservations.

"(d) Municipal, rural, and industrial water systems constructed with funds authorized under this Act may deliver Missouri River water into the Hudson Bay drainage only after the Secretary of the Interior, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, has determined the

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adequate treatment has been provided to meet the requirements of the Boundary Waters Treaty of 1909.".

SEC. 6. SPECIFIC FEATURES.

The Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"SEC. 8. (a)(1) In accordance with the recommendations of the Garrison Diversion Unit Commission Final Report and section 1 of this Act, the Sykeston Canal shall be constructed as a functional replacement for the Lonetree Dam and Reservoir. The Sykeston Canal shall be designed and constructed to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs authorized in this Act. The Sykeston Canal shall be located, constructed, and operated so that, in the opinion of the Secretaries of the Interior and State, no violation of the Boundary Waters Treaty of 1909 would result. The Secretary may not commence construction on the Sykeston Canal until a master repayment contract consistent with the provisions of this Act between the Secretary and the appropriate non-Federal entity has been executed.

"(2) The Lonetree Dam and Reservior shall remain an authorized feature of the Garrison Diversion Unit; however, construction funds may be requested by the Secretary for Lonetree Dam and Reservoir only after:

"(A) The Secretary has determined that there is a need for the dam and reservoir based on a contemporary appraisal using procedures such as those employed in the preparation of feasibility studies for water resources development projects submitted to Congress:

"(B) consultations with the Government of Canada have reached a conclusion satisfactory to the Secretary of State, after consultation with the Administrator of the Environmental Protection Agency, that no violation of the Boundary Waters Treaty of 1909 would result from the construction and operation of the dam and reservoir; and

"(C) the Secretaries of the Interior and State have submitted the determinations required by subparagraphs (A) and (B) above to the Congress and 90 calendar days have elapsed.

"(b) Taayer Reservoir is deauthorized as a project feature. The Secretary is directed to acquire up to 5,000 acres in the Kraft and Pickell Slough areas and to manage the area as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and Pickell Slough complex, the Secretary is authorized to acquire wetlands in the immediate vicinity which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the complex. The Secretary is also authorized to provide for appropriate visitor access and control at the refuge.".

SEC. 7. EXCESS CROPS.

The Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433), is amended by adding the following new section at the end thereof:

"SEC. 9. Until the construction costs of the facilities authorized in section 5 are repaid, the Secretary is directed to charge a "surplus crop production charge" equal to 10 per cent of full cost, as defined in Section 202(3)(A)-(C) of the Reclamation Reform Act of 1982 (P.L. 97-293, 96 Stat. 1263), for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the surplus crop production charge for the succeeding year on or before July 1 of each year.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

The Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"SEC. 10. (a) There are authorized to be appropriated $238,305,000 for carrying out the provisions of section 5 and section 8(a)(1) of this Act. Such sums shall remain available until expended.

"(b)(1) There is authorized to be appropriated $200,000,000 to carry out the provisions of section 7(a) of this Act. Such sums shall remain available until expended.

"(2) There are authorized to be appropriated $61,000,000 to carry out the provisions of section 7(b) through section 7(d) of this Act. Such sums shall remain available until expended.

"(c) There is authorized to be appropriated for carrying out the remaining provisions of this Act $80,535,000. No funds are authorized for the construction of the

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Lonetree Dam and Reservoir. There are also authorized to be appropriated such additional funds as may be necessary for operation and maintenance of the unit.

"(d) Any funds previously appropriated for the Garrison Diversion Unit may be expended to carry out any of the provisions of this Act.".

SEC. 9. WETLANDS TRUST.

The Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) is amended by adding the following new section at the end thereof:

"SEC. 11. (a) FEDERAL CONTRIBUTIONS.—From the sums appropriated under Section 10 of this Act for the Garrison Diversion Unit, the Secretary of the Interior shall make an annual Federa. contribution to a Wetlands Trust established in accordance with subsection (b), and operated in accordance with subsection (c), of this section. The amount of each such annual contribution shall be as follows:

"(1) For fiscal year 1986: $2,000,000.

"(2) For each of the fiscal years 1987 through 1990: 3% of the total amount appropriated under Section 10 of this Act, but not to exceed $500,000 for each such fiscal year.

"(3) For each fiscal year after 1990: 5% of the total amount appropriated under Section 10 of this Act, but only to the extent that a contribution to the Trust equal to 10% of the Federal contribution is provided or contracted for by the State of North Dakota from non-federal funds. The contributions of the State of North Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary.

"(4) The total Federal contribution pursuant to this Act shall not exceed $12,000,000.

"(b) ESTABLISHMENT OF TRUST.—A Wetlands Trust shall be treated as established in accordance with this subsection if it complies with each of the following requirements:

"(1) The Trust is established as a non-profit corporation under the laws of North Dakota with its principal office in North Dakota.

"(2) The Trust is under the direction of a Board of Directors which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

"(3) The Board of Directors of the Trust is comprised of 6 persons appointed as follows, each for a term of 2 years:

"(A) 3 persons appointed by the Governor of North Dakota.

"(B) 1 person appointed by the National Audubon Society.

"(C) 1 person appointed by the National Wildlife Federation.

"(D) 1 person appointed by the North Dakota Chaper of The Wildlife Society.

Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the Board of Directors is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiratioon of his or her term until his or her successor has taken office.

"(4) Members of the Board of Directors serve without compensation.

"(5) The corporate purposes of the Trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of North Dakota.

"(c) OPERATIONS OF THE TRUST.—A Wetland Trust established as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if each of the following requirements are met:

"(1) The Trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of North Dakota in accordance with its corporate purpose as provided in subsection (b)(5).

"(2) Pursuant to its corporate charter, the Trust has the authority to exercise each of the following powers:

"(A) The power to acquire lands and interests in land and power to acquire water rights. Lands or interests in land may be acquired by the Trust only with the consent of the owner thereof and with the approval of the Governor of North Dakota

"(B) The power to finance wetland preservation, enhancement, restoration, and management or wetland habitat programs.

"(3) All funds received by the Trust under subsection (a) are invested in accordance with the requirements of subsection (d). No part of the principal

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amount of such funds may be expended for any purpose. The income received by the Trust from the investment of such funds shall be used by the Trust exclusively for its purposes and operations in accordance with the subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d).

"(4) The Trust agrees to provide such reports as may be required by the Secretary or the Governor of North Dakota and makes its records available for audit by Federal and State agencies.

"(d) INVESTMENT OF TRUST FUNDS.—The Secretary of the Interior, in consultation with the Secretary of the Treasury and the Governor of North Dakota, shall establish requirements for the investment of all amounts received by the Trust under subsection (a) or reinvested under subsection (c)(3). Such requirements shall ensure that such amounts are invested in accordance with sound investment principles and shall ensure that persons managing such investments will exercise their fiduciary responsibilities in an appropriate manner.".

SEC. 10. SOIL SURVEYS.

Section 1 of the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. 390a) is amended by inserting at the end thereof the following: "Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.".

SEC. 11. SHORT TITLE

This Act may be referred to as the "Garrison Diversion Unit Reformulation Act of 1986".

SEC. 12. COMPLIANCE WITH APPROPRIATIONS ACT.

This Act to reformulate the Garrison Diversion Unit shall be deemed to meet all the time and substance requirements specified in the Fiscal Year 1986 Energy and Water Development Appropriations Act (P.L. 99-141).

I. INTRODUCTION

A. PURPOSE

The purpose of H.R. 1116 is to authorize the construction of the Garrison Diversion Unit, North Dakota, substantially in accordance with the recommendations of the Garrison Diversion Unit Commission Final Report (dated December 20, 1984; hereafter "the Commission report"). The project authorized by H.R. 1116 is intended to meet the contemporary water needs of the State of North Dakota, including municipal, rural and industrial water needs, while specifically preserving any existing rights of the State to use water from the Missouri River. Specific provisions are included in the bill to minimize the environmental impacts of constructing and operating the Garrison Diversion Unit, especially impacts to fish and wildlife resources.

H.R. 1116 sets forth specific requirements which are intended to assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909.

H.R. 1116 includes measures which will improve the repayment provisions of the Garrison project by requiring the execution of new contracts, executed in conformance with the Reclamation Reform Act of 1982, for the repayment of costs allocated to irrigation before construction can begin on irrigation facilities. H.R. 1116 also authorizes the use of power revenues as a means of repaying the capital costs attributable to irrigation that are beyond the irrigator's ability to pay.

Finally, it is a purpose of H.R. 1116 to offset the loss of farmland within North Dakota resulting from the construction of major features of the Pick-Sloan Missouri Basin Program, by means of a

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Federally-assisted water resource development project providing irrigation for 130,940 acres of land.

B. BACKGROUND AND NEED FOR THE LEGISLATION

Historical background

The concept of a Missouri River diversion has its roots in the early days of North Dakota statehood, when farmers began looking for ways to secure a dependable source of water to irrigate the dry, semi-arid farmland in the central and western parts of the State. In 1889, North Dalota's constitutional convention requested that Congress consider a plan to construct a canal from the Missouri River in Montana to divert water for irrigation across North Dakota to the Red River of the North, which forms the eastern boundary of the State with Minnesota.

The idea of a diversion was given greater emphasis when the harsh effects of the Dust Bowl of the thirties were felt in North Dakota. During the Depression, North Dakota experienced a debilitating drought that destroyed vast amounts of productive farmland and caused hardship and suffering for many North Dakotans. Many farmers were forced to abandon their farms and their homes, and many small businesses relying on the farm trade were forced to close.

Determined to avoid another devastating drought, the political leaders of North Dakota began to look for ways to divert Missouri River waters. The lack of capital available to the North Dakota State government made a Federal program necessary. Beginning in 1935, appeals from North Dakotans for a Federal program began in earnest.

The Pick-Sloan Missouri River Basin Plan

While North Dakotans were attempting to gain Federal recognition of the need for a Missouri River diversion, other downstream states were appealing to both the Corps of Engineers and the Bureau of Reclamation to devise plans to dam the Missouri River in several strategic locations to provide flood control, navigation, and irrigation benefits. A separate generalized plan for flood control, irrigation, power, navigation, and incidental uses, was prepared by each agency and reported by the Bureau during the 78th Congress in Senate Document 191 (the Sloan plan) and by the Corps in House Document 475 (the Pick plan).

In an attempt to solve the problems of both Upper and Lower Missouri River basin states, Congress reconciled the differences between the plans. The new compromise plan was enacted in 1944 as Section 9 of the Flood Control Act of 1944 (Act of December 22, 1944; 58 Stat. 891; P.L. 78-534; hereafter "the 1944 Act").

Cenerally known as the Pick-Sloan Missouri River Basin Plan, the conprorise envisioned the construction of six mainstem dams and reservoirs and numerous reclamation projects in several states along the Missouri River and its tributaries. In North Dakota, the Pick-Sloan Plan included the Garrison Dam and Reservoir, which would provide flood control and other benefits downstream. Garrison Dam, which was completed in 1955, inundated about a half-million acres of valuable farm and Indian lands.

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Also included in the Pick-Sloan compromise was the Bureau's plan to divert water from the reservoir behind Fort Peck dam in eastern Montana to irrigate over a million acres of land located in Montana and western and central North Dakota. This proposal became known as the "Missouri-Souris Project", and recommended irrigation of 1,275,100 acres located primarily in northwestern North Dakota.

Garrison diversion revisions and congressional reauthorization

The Missouri River diversion plan floundered due to the inability of the Bureau of Reclamation to find soils in the western part of North Dakota which were suitable for irrigation. As a result, the Bureau revised the diversion plan to take water from the new Garrison Reservoir instead of Fort Peck Reservoir, and to irrigate other lands to the east. With the new name "Garrison Diversion", the Bureau's 1957 Feasibility Study on the re-designed project recommended irrigation of 1,007,000 acres and other water development in central and eastern North Dakota. This report was published, with modifications, by Congress in 1960 as House Document 325 (86th Congress, 2d Session).

In anticipation of Congressional approval and funding for this new "million acre" diversion plan, the North Dakota State Legislature created the 25-county Garrison Diversion Conservancy District in 1955 to act as the responsible State agency for implementing the project. The District was granted the authority to levy a general tax on all property within the Conservancy District and to finance the repayment obligations for the project.

Despite the support for the project in North Dakota, final Congressional authorization for construction of Garrison Diversion continued to lag behind the progress which was made on building Garrison Dam and the other Missouri River reservoirs authorized by the 1944 Act. Because of necessary alterations in the original plan and language in a 1964 Appropriations Act (Act of August 14, 1964; 78 Stat. 446; P.L. 88-442) requiring specific reauthorization for all units of the Pick-Sloan Missouri Basin Program, the Bureau of Reclamation was obliged to return to Congress for reauthorization.

Several versions of the Garrison Diversion Unit were submitted to the Congress before a revised project plan was finally authorized. In 1965, Congress enacted legislation to authorize construction of the 250,000 acre Garrison Diversion Unit as the initial stage of the 1,007,000 acre project (Act of August 5, 1965; 79 Stat. 433; P.L. 98-108; hereafter "the 1965 Act"). Construction of the project began in 1968.

Problems for Garrison

The 1965 Congressional authorization of the 250,000 acre Garrison plan was not without controversy. While supporters of the project pointed to the many benefits for North Dakota and the need to compensate the State for land inundated by the construction of Garrison Dam and Reservoir, others in Congress criticized the large cost of even the scaled-down project, the conflict with Federal farm policies, and the relatively small amount of money to be repaid by water users.

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Construction of the main project supply canal (McClusky Canal) stirred new opposition to the project in 1968. Farmers in the path of canal construction expressed strong opposition to Garrison because in some cases it required the taking of productive farmland for project construction, wildlife habitat mitigation, and rights-of-way. Many farmers complained bitterly that they had to abandon their productive farms in order to make way for a project designed to irrigate someone else's farm in a distant part of the State. In addition, the Bureau of Reclamation was criticized as being insensitive to these problems, and several local landowner groups were formed to fight further funding for the project.

Other early opposition to the project came from conservation and wildlife organizations. Although some of these groups originally supported construction of Garrison as being beneficial for wildlife, many of these groups withdrew their support for the project on the grounds that construction would destroy too many acres of naturally-occurring prairie wetlands (potholes), degrade water quality of rivers, streams, and lakes in the area, flood wildlife habitat, and result in a significant net loss of waterfowl. A variety of mitigation and enhancement plans were devised to address the wildlife problems, but wildlife conservation issues continued to pose significant problems for the project.

International concerns

Soon after project construction began, the Canadian government expressed its concern that the Garrison Diversion Unit would threaten Canadian reasources and cause a potential violation of Article IV of the Boundary Waters Treaty of 1909, which provides that "waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other". Concerns related primarily to the quantity and quality of the water entering Canada and to the introduction of foreign biota.

Increasing Canadian concerns about Garrison led to a diplomatic note being forwarded to the United States in October, 1973, requesting a moratorium on construction of the project until mutually acceptable solutions were in place to resolve the problems. Binational meetings to explore possible solutions were held through 1975, when both countries agreed to refer the matter to the International Joint Commission (IJC).

In its 1977 report, the IJC set forth the potential impacts that the project and any irrigation in the Hudson Bay Basin might create.[1] First, the introduction of foreign and undesirable fish and biota from the Missouri River into the Hudson Bay Basin via Garrison water supply canals and drains could result in irreversible and massive reductions of valuable commercial, recreational, and subsistence fisheries of Lakes Manitoba and Winnipeg. Whitefish, walleye, sauger, and lake herring would be most affected. Second, Garrison drainage would result in significant increases in the concentrations of total dissolved solids, nitrates, sulfates, sodium, and phosphorus in Canadian waters. This would lead to increased mu-

[1] International Joint Commission, 1977, An IJC Report to the Governments of Canada and the United States, *Transboundary Implications of the Garrison Diversion Unit.*

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nicipal water treatment costs and adverse effects on rural domestic, industrial, and agricultural water use in Canada.

These findings led the IJC to conclude that construction and operation of the Garrison Diversion Unit "would cause significant injury to health and property in Canada" in violation of the Boundary Waters Treaty of 1909.

Solutions which would eliminate Canadian concerns without destroying the economic and operational integrity of the project were elusive. Technical teams from the United States and Canada met regularly in attempts to resolve the problems. Meanwhile, construction of features which would transfer water into the Hudson Bay drainage were delayed.

The Canadian government, through diplomatic notes and testimony at public hearings, provided suggestions for resolving biota transfer and water quality problems. In a December, 1984 diplomatic note, the Government of Canada, in comments on the Garrison Diversion Unit Commission's Preliminary Final Report, indicated that the irrigation (restricted to areas not flowing into the Hudson Bay basin), and municipal, rural, and industrial water systems than under consideration by the Commission could lead to satisfactory resolution of the transboundary issues associated with the authorized Garrison plan.

Proposals to modify the project

The Secretary of the Interior has proposed significant changes to the Garrison Diversion Unit on two separate occasions.

Pursuant to the Stipulation and Order issued by the Court in *National Audubon Society* v. *Andrus* (discussed below), the Secretary recommended development of an entirely new plan for the Garrison Diversion Unit in 1979. The recommended plan called for the development of 96,300 acres of irrigation. However, the plan was opposed by the State of North Dakota, and was never submitted to Congress for consideration.

In response to Canadian concerns, the State of North Dakota proposed in 1981 that a new "phased development" plan (referred to as "Phase I" project) for the Garrision Diversion Unit be constructed to avoid impacts on Canada.[2] That proposal outlined a plan for development of the first 85,000 acres of the 250,000 acre project, including construction of the principal supply works and irrigation features in the James and Sheyenne River drainages. Although this proposal was received favorably in the Department of the Interior, Congress never acted to reauthorize the Garrison Diversion Unit in this manner.

Environmental impact statements

Since 1974, five major environmental impact statements (EIS) on the 250,000 acre Garrison Diversion Unit plan and variations to that plan have been prepared by the Bureau of Reclamation, as required by the National Environmental Policy Act of 1969 (NEPA).[3] The five major EIS's are described below.

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[2] State of North Dakota, 1981 *Special Report on Noth Dakota's Plan for Phase Development of the Garrison Diversion Unit.*

[3] In addition, the Bureau circulated a brief EIS shortly after the passage of NEPA in an effort to comply with a lawsuit filed by the Committee to Save North Dakota, Inc.

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1. *Final Environmental Statement, Initial Stage, Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota.*—This EIS (filed in 1974 and designated as INT FES 74-3) addressed the impacts of constructing the authorized 250,000 acre plan for Garrison. This EIS was supplemented with INT FES 74-21, also filed in 1974.

2. *Draft Environmental Statement, LaMoure and Oakes Section, Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota.*— (1976, INT DES 76-23). This draft EIS was prepared to provide detailed information on facilities to be constructed in the LaMoure and Oakes Section of the authorized 250,000 acre project. This EIS was intended to fulfill commitments made in the 1975 EIS to provide more detailed evaluations prior to the initiation of construction. A final EIS for the LaMoure and Oakes Section was never filed.

3. *Final Comprehensive Supplementary Environmental Statement, Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota* (1979 INT FES 79-7).—This EIS was prepared pursuant to the Stipulation and Order entered into and approved by the United States District Court for the District of Columbia on May 11, 1977, in the case of *National Audubon Society, Inc. v. Andrus.* The EIS presented seven alternative plans for developing the Garrison project. The preferred alternative was a plan to reduce the project irrigated acreage from 250,000 acres to 96,300 acres.

4. *Final Supplemental Environmental Statement, Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota* (1983, INT FES 83-35).—This EIS examined the impacts of the State's 1981 "Phase I" project, which proposed an initial irrigation development of 85,000 acres, excluding lands that would drain into the Hudson Bay drainage. A revised wildlife plan was also proposed.

5. *Draft Supplemental Environmental Statement, Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota* (1986, DES 86-9).—This draft EIS discussed impacts associated with modifications to the Garrison project which were recommended in the December 20, 1984 Final Report of the Garrison Diversion Unit Commission. The Commission recommended development of an alternative plan to provide the State of North Dakota with a Federally-funded water development project. This EIS addresses the impacts of a 113,300 acre irrigation project (the non-Indian irrigation development recommended by the Commission).

Court challenges

Construction of the Garrison Diversion has been sporadic, partly because of delays caused by litigation. Three lawsuits have been instrumental in shaping the project over the last 15 years. The most recent suit was dismissed in 1985, and there war no suits pending at this time.

1. Committee to Save North Dakota, Inc. v. Morton

This was an early NEPA lawsuit, challenging the Interior Department for proceeding on Garrison without preparing an environmental impact statement (see footnote 3). After an EIS was filed, it was criticized by many as being inadequate. The Federal

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District Court for North Dakota agreed, staying proceedings while a revised EIS was prepared.

The revised draft EIS was filed on April 5, 1973. On June 13, 1974, the suit was dismissed. The 8th Circuit Court of Appeals affirmed the dismissal on January 15, 1975. The Court made it clear that plaintiffs could amend their complaint and file a challenge based on the adequacy of the 1974 EIS.

2. National Audubon Society v. Kleppe

Such a suit was filed on May 27, 1976 in the Federal District Court for the District of Columbia. In this suit, the National Audubon Society challenged the adequacy of the Bureau's 1974 EIS. The Court never ruled on the merits. The parties entered into a Stipulation and Order on May 11, 1977. In this agreement, the Secretary agreed to defer construction on Garrison and prepare a new, comprehensive EIS on the project.

The final EIS was released on March 7, 1979 with an agreement by the Secretary to seek reauthorization of Garrison as recommended in the final EIS and endorsed by the Secretary. This recommended plan called for the development of 96,300 acres of irrigation. The legislation proposed by the Department to reauthorize Garrison in accordance with this plan was never enacted.

Legal maneuvers continued until the dismissal of this lawsuit without prejudice on October 15, 1982.

3. James River Flood Control Association v. Watt

On March 31, 1981, suit was filed in the Federal District Court for South Dakota, seeking to prevent the award of contracts for the Oakes Pumping Plant. The plaintiffs argued that the various EIS's did not adequately address adverse impacts of the project. It was also argued that the United States' support of the State's proposed "Phase I" plan to irrigate 85,000 acres was not consistent with the project authorization.

After the creation of the Garrison Diversion Unit Commission in 1984 (see below), the Court on October 11, 1984 stayed all proceedings until January 2, 1985. The United States then moved to dismiss the case on the basis that all the issues were moot because of the recommendations made by the Commission. On March 15, 1985, the Court dismissed the case without prejudice.

Congressional votes

The Garrison Diversion Unit has not enjoyed the security of steady Congressional appropriations which characterizes many water resource development projects. Since 1975, there have been at least eight separate roll call votes in the House of Representatives and the Senate on funding for the project. Support for continued funding was not seriously threatened until 1981, when a demonstrative vote against the project was cast in the House. The possibility that Congress might finally decide to eliminate all funds for the project was instrumental in reaching agreement to establish the Garrison Diversion Unit Commission.

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Garrison Diversion Unit Commission

In 1984, the Congress enacted Section 207 of P.L. 98-360 [4] which recognized that the Garrison Diversion Unit, as authorized, raised significant issues of economic, environmental and international concern. The legislation directed that a special commission be established to examine the water needs of North Dakota and make recommendations to reformulate the project to meet the contemporary water development needs of the State.

The legislation establishing the Commission recognized the entitlement of the State of North Dakota to a federally funded water development program as compensation for North Dakota's contributions to the Pick-Sloan Missouri Basin program. The Commission was directed to consider a large number of specific subjects in making its recommendations, ranging from the need for better municipal, rural, and industrial water systems in North Dakota to the economic and environmental impacts of alternative configurations of the project.

The 12-member panel was appointed by Interior Secretary Clark on August 11, 1984. Former Louisiana Governor David Treen was named by Secretary Clark as Chairman. The first business meeting of the Commission was held in Washington, D.C. on August 30, 1984. By statute, the Commission was required to finish its work and make recommendations to the Secretary of the Interior and Congress no later than December 31, 1984.

The Commission held 5 public hearings during its four month existence, all of them in North Dakota. In addition, public workshops on a variety of issues pertinent to the Commission directive were held in North Dakota to receive advice on technical issues (e.g., project economics, municipal, rural, and industrial water needs, wildlife and mitigation). Testimony from the hearings and concepts developed at the workshops guided the Commission investigations. Commissioners also toured the project area to become familiar with environmental conditions and water resource needs.

As a result of its investigations, the Commission formulated a plan which placed a completely new emphasis on the development of water supply systems for cities, towns, industries, and rural domestic water users. Although Garrison has always had municipal and industrial water supply development as a stated project purpose, the authorized (1965) project gave overwhelming emphasis to irrigation development. There is little doubt that the Commission met the Congressional expectations of completely reformulating the Garrison project.

The Garrison Diversion Unit Commission, on December 20, 1984, submitted its findings to the Secretary of the Interior and the Congress reformulating the project. The Commission plan reduces irrigation from 1,007,000 acres to 130,940 acres, substantially increases municipal, rural, and industrial water service throughout North Dakota, provides for changes in mitigation, and makes other recommendations. The Commission plan formed the basis of H.R. 1116, introduced by Mr. Dorgan. The bill was the subject of a hear-

[4] Reprinted as an Appendix to this report.

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ing of the Subcommittee on Water and Power Resources on February 28, 1985.

Activities during 1985

Following hearings before the Subcommittee, a series of negotiations were undertaken to develop compromise legislation. These negotiations were given impetus by a provision added to the Fiscal Year 1986 Energy and Water Development Appropriations Act (P.L. 99-141). This provision stated no funds could be expended for construction or land acquisition on Garrison after March 31, 1986 unless legislation reformulating the Unit was enacted.

It is important to note that if no legislation reformulating the Unit is enacted, it does not necessarily mean that construction on Garrison will come to a halt. The 250,000 acre plan would still be authorized and future appropriations could be made available for that project. Thus, H.R. 1116 should be enacted to reduce the size and environmental impact of the Garrison Diversion Unit, deauthorize obsolete and impracticable irrigation areas and resolve a major international environmental controversy.

II. Explanation of the Bill

SECTION 1. PURPOSE AND AUTHORIZATION

Organization of the bill

H.R. 1116, as ordered reported, amends selected portions of the 1965 Garrison reauthorization act. H.R. 1116 would retain several important sections of the 1965 Act, including: the basic fish and wildlife policies (Sec. 2(a)-(h)); the physical integration with the other features of the Pick-Sloan Missouri Basin Program (Sec. 3); and, the 1965 interest rate used for various computations (Sec. 4). All other portions of the 1965 Act would be repealed by H.R. 1116.

The Committee would point out that by amending the 1965 Act, some fundamental policy provisions normally imposed on new projects would not be required of the reformulated Garrison Diversion Unit. For example, no cost-sharing requirements are imposed by this bill on non-Federal entities for irrigation investments. The Committee recognizes that this is a departure from normal policy. However, the Committee notes that the contracting and repayment requirements in the bill will improve the reimbursement of existing obligations to the Federal government. Further, the Committee believes that this bill will bring to a conclusion over 20 years of debate and controversry surrounding this project. This "finality" could only be achieved after a comprehensive agreement where all parties were required to compromise on key points. H.R. 1116 is a compromise bill reflecting "give and take" by all parties. This compromise is reflected as amendments to the 1965 Act, retaining several of the original provisions.

Statement of purpose

Section 1 of H.R. 1116 begins by deleting the entire first section of the 1965 Act. H.R. 1116 then substitutes a new first section which outlines seven purposes of the amended Act.

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First, the amended Act would implement the recommendations of the Garrison Diversion Unit Commission Final Report (dated December 20, 1984) as specified and modified by this legislation. The Committee's intent is that the Secretary implement the recommendations of that report unless otherwise stated in this legislation.

Second, the amended Act would meet the contemporary water needs of the State of North Dakota as identified in the Commission report. The Commission recognized that municipal, rural and industrial water needs have taken on a greater importance and recommended reformulation of the project to meet these needs. H.R. 1116 reformulates the project to give greater emphasis to municipal, rural and industrial water supply needs by establishing a comprehensive MR&I program and deauthorizing over 900,000 acres of irrigation.

Third, the amended Act would minimize the environmental impacts associated with construction and operation of the reformulated Garrison Diversion Unit. The bill includes a number of safeguards and protections to lessen the environmental impacts of the project.

Fourth, the amended Act would assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909. As indicated earlier in the report, the 250,000 acre project could have caused substantial impacts on Canada by diverting untreated Missouri River water into the Hudson Bay drainage. The bill includes a number of safeguards to eliminate impacts on Canada and assist the United States in meeting its treaty obligations.

Fifth, the amended Act includes a number of measures to ensure more timely repayment of project costs. The changes in repayment requirements will ensure that all the costs allocated to irrigation will be repaid in forty years, including irrigation costs repaid by power consumers.

Sixth, the amended Act includes provisions which will preserve the existing rights of the State of North Dakota to use water from the Missouri River, notwithstanding the repeal of irrigation acreage contained in the 1944 and 1965 Acts.

Seventh, the amended Act authorizes the development of 130,940 acres of irrigation as an offset to the inundation of farmland within North Dakota resulting from the construction of Garrison Dam in 1955.

Project authorization

Section 1(b) of the amended Act authorizes the Secretary of the Interior to plan and construct a multi-purpose water resource development project in North Dakota providing up to 130,940 acres of irrigation, municipal, rural, and industrial water, fish and wildlife enhancement, recreation, and other purposes as authorized by the Federal Reclamation laws. This project is to be undertaken by the Secretary substantially in accordance with the plans set forth in the Commission final report, except as specified in this Act.

The Committee recognizes that this project authorization section is substantially different than that provided in the 1944 and 1965 Acts. The most important difference is that this project is to be carried out in accordance with the Commission final report and this Act, and *not* in accordance with previous planning documents.

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Indeed, it is important to note that *all* references to the report of the Secretary contained in House Document Numbered 325, 86th Congress, 2nd Session, and the Bureau of Reclamation report dated November, 1962 (revised February, 1965), which supplemented House Document 325 have been deleted and repealed. As a result, the Secretary is only authorized to construct the project outlined in the Commission final report, unless modified by H.R. 1116. Thus, in the case of irrigation facilities, a ceiling of 130,940 acres has been placed on irrigation development, and the Secretary is not authorized to develop irrigation in excess of that figure.

The Committee recognizes that Section 1(b) is different from other Reclamation project authorization legislation. The normal procedure is to confirm a planning document (usually a feasibility study) which has been prepared by the Secretary. In this case, H.R. 1116 directs the Secretary to plan and construct a project substantially in accordance with the garrison diversion Unit Commission final report. The Commission report serves as a surrogate or replacement for the feasibility study.

Future projects

Section 1(c) of the amended Act provides that nothing in this Act should be construed, or should be intended, to preclude North Dakota from seeking Congressional authorization to plan, design or construct additional Federally-assisted water resource projects.

The Committee recognizes that some in North Dakota do not believe that the Garrison Diversion Unit as reauthorized by this Act fulfills the commitment to compensate for the inundation of lands as a result of construction of Garrison Dam. The Committee disagrees with the conclusion. This legislation fulfills all commitments the Federal government has to compensate North Dakota for the inundation of lands as a result of construction of the mainstem Missouri River dams under the authority of the Flood Control Act of 1944. However, the Committee recognizes that the State may wish to pursue its claims and present arguments to a future Congress. Section 1(c) has been included to make it clear that the State should not be precluded from making such arguments.

Water rights

Section 1(d) of the amended Act provides that nothing in this Act shall be deemed to diminish the quantity of water from the Missouri River which North Dakota may beneficially use, pursuant to any right or rights it may have under Federal law existing immediately before the date of enactment of this Act and consistent with the treaty obligations of the United States.

During consideration of H.R. 1116 on March 19, 1986, the Committee adopted a water rights amendment proposed by Mr. Emerson of Missouri. The amendment was the subject of a colloquy between Representatives Strang and Emerson while it was before the Committee for consideration. In the view of the Committee, and as stated in the colloquy, the basic purpose for the Emerson amendment is to hold North Dakota's water rights in the Missouri River, if any, harmless against the effects of the deauthorization of part of the Garrison Diversion Unit. Missouri does not concede any such rights to North Dakota.

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However, the Committee agrees that North Dakota should be able to claim, after passage of H.R. 1116, whatever rights it could legitimately claim today. Missouri acknowledged the existence of two lawsuits, *Missouri* v. *Andrews*, now pending in the Eighth Circuit Court of Appeals, and Original No. 103, *South Dakota* v. *Nebraska*, then pending before the Supreme Court on motion for leave to file complaint. Missouri believes that its positions in both lawsuits are well founded. However, in the view of the Committee, the amendment is not intended to include these lawsuits within its scope as they are not the subject of final judicial rulings. By the same token, of course, if and when they do become final rulings, there is nothing in the Emerson amendment which would allow anyone to escape the effects of these decisions.

The Emerson amendment is designed in part to make certain that none of the positions of the parties or other interested persons in these lawsuits are affected by the deauthorization of irrigation service areas of the Garrison Diversion Unit as proposed in H.R. 1116. Finally, there is nothing in the Emerson amendment which is intended to affect any rights North Dakota may have under state law.

Deauthorization[5]

Section 1(e) of the amended Act provides for the deauthorization of previously authorized project features. This section states that all features of the Missouri-Souris Unit of the Pick-Sloan Missouri Basin Program in North Dakota which were authorized in Section 9 of the Flood Control Act of 1944 for which no funds have been appropriated for construction, and which are not authorized for construction by this Act, are hereby terminated. In addition, this provision also provides that Sections 1 and 6 of the 1965 Act are repealed.

As a result of this section, the authority of the Secretary to plan and construct 922,910 [6] acreas of irrigation service areas has been terminated. In addition, the supply works, canals, laterals and drainage facilities necessary to serve these areas have been terminated as well. The specific areas authorized by H.R. 1116, the 1944 Act, and the acreage terminated by H.R. 1116 are detailed in Table 1.[7]

TABLE 1.—IRRIGATION AREAS TERMINATED BY H.R. 1116

[In acres]

Irrigation areas	Areas authorized by 1944 act	Authorized by H.R. 1116	Terminated by H.R. 1116
Souris Loop area	327,670	0	327,670
East Souris area	151,950	0	151,950
Coleharbor section	39,820	[1] 13,700	26,120

[5] As used in this report, the terms "deauthorization," "termination," and "repealed" are synonymous.

[6] This figure is obtained by deleting the "minus" numbers from the "Terminated" column in Table 1.

[7] A more detailed description of the areas terminated by H.R. 1116, including the specific supply works necessary to serve them, can be found in the feasibility study for the 1965 reauthorization of the Garrison Diversion Unit, House Document 325, 86th Congress, 2nd Session, February 4, 1960.

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TABLE 1.—IRRIGATION AREAS TERMINATED BY H.R. 1116—Continued

[In acres]

Irrigation areas	Areas authorized by 1944 act	Authorized by H.R. 1116	Terminated by H.R. 1116
Harvey Pumping area	10,310	2,000	8,310
New Rockford area	67,190	[2] 22,135	45,055
Sykeston area	37,000	0	37,000
Berlin area	12,740	0	12,740
Harvey-Maddock area	86,260	0	86,260
Warwick-McVille area	41,380	0	41,380
Bakdhill area	96,810	0	96,810
LaMoure section	12,200	13,350	−1,150
Oakes section	108,000	23,660	84,340
McClusky Canal area	10,790	[3] 10,515	275
Velva Canal area	5,000	0	5,000
Undesignated	0	28,000	−28,000
Indian irrigation	0	17,580	−17,580
Total	1,007,12[illegible]	130,940	876,180

[1] Includes the Tolte Lake area.
[2] Includes New Rockford area (20,935 acres) and New Rockford Canalside (1,200 acres).
[3] Includes McClusky Canal (4,000 acres) and Lincoln Valley (6,515 acres).

Supply works sizing

Section 1(f) of the amended Act directs the Secretary to construct all the principal supply works for the Garrison Diversion Unit to meet the capacities identified in the Commission report, with two exceptions. First, the James River Feeder Canal is to be sized to a capacity of no more than 450 cubic feet per second (cfs). Second, the Sykeston Canal is to be sized so that it is only large enough to meet the water delivery requirements of the irrigation areas and municipal and industrial water supply needs authorized in H.R. 1116. (For additional discussion regarding the Sykeston Canal see Sec. 6 of H.R. 1116 which adds a new Sec. 8(a)(1) to the 1965 Act.)

The Commission final report recommended that the James River Feeder Canal be constructed to a capacity of 1,600 cfs. However, the irrigation and MR&I water delivery requirements in H.R. 1116 for the James River basin are such that a much smaller feeder canal would suffice. The Committee was advised during its deliberations that the 1,600 cfs figure was in error. The correct number was 450 cfs. Therefore a maximum capacity of 450 cfs has been imposed. A canal of this size will be sufficient to meet the safety needs of the Sykeston Canal.

H.R. 1116 also provides that the Sykeston Canal be built to a capacity to meet the water delivery requirements of the irrigation areas and M&I water supply needs authorized in H.R. 1116. The Committee recognizes that some of the supply works previously constructed (i.e., McClusky Canal and New Rockford Canal) are sized to deliver water to irrigation service areas which are no longer authorized. However, since the entire project has been reduced in size, the Committee believes it would be uneconomic to construct another canal with unused or excess capacity. Therefore, the new Section 1(f) of the 1965 Act would require that the Sykeston Canal be reduced in size to meet the requirements of the small-

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er project. This provision will mean that the Secretary will construct the Sykeston Canal with a capacity of approximately 800 cfs.

Investments in unused features

Section 1(g) of the amended Act provides that the any investments in features constructed prior to enactment of H.R. 1116, which will no longer be employed to full capacity, shall be nonreimbursable. Several important project features have been designed and constructed to meet the water supply requirements of the 1,007,000 or 250,000 acre plans. However, because the project has now been reduced in size, there will be unused capacity in some facilities. The Committee does not believe it is appropriate for the project beneficiaries to be required to repay the cost of this unused capacity. These costs should be absorbed as a reasonable cost of satisfying the Federal obligation to the State of North Dakota.

Therefore, Section 1(g) directs that the Secretary determine these costs and make them nonreimbursable. According to estimates provided by the Bureau of Reclamation, these costs are anticipated to be $52,820,000. If, however, the full capacities of these project features are ever used in some future expansion of the project, these nonreimbursable costs should be reassigned to purposes for which the features are used. Various project features with sunk costs that are not associated with the reformulated project, such as Lonetree Dam, are to be reimbursed under current Reclamation repayment policies. The Bureau of Reclamation estimate of these costs is $53,202,697.

SECTION 2. FISH AND WILDLIFE

The impact of the Garrison Diversion Unit on wildlife resources in North Dakota has been a subject of considerable concern ever since the project was authorized. The Committee recognizes that the Garrison Commission developed a unique and comprehensive approach for dealing with and mitigating the impacts of the project. For example, the Commission rejected the former mitigation plan for Garrison which relied heavily on a wildlife management scheme referred to as Habitat Evaluation Process. It directed that a new mitigation plan be developed by the Fish and Wildlife Service based on the new criteria and policies established in the Commission report. The Committee supports the Commission's approach and it expects the Secretary to implement the Commission recommendations, unless otherwise directed.

Section 2 of H.R. 1116 adds two new subsections to the 1965 Act dealing with fish and wildlife conservation.

Acre-for-acre

A new Section 2(i) has been added which provides that the mitigation of fish and wildlife losses incurred as a result of construction of the Garrison Diversion Unit will be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

The Garrison Commission final report adopted the policy of mitigating losses on an acre-for-acre basis, based on ecological equiva-

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lency, concurrent with project construction. The new Section 2(i), which reiterates the Commission's policy, has been included so there will be no doubt regarding the policy the Committee expects the Secretary to follow in mitigating the impacts of the project on wildlife habitat. Mitigation is to precede, or at least be concurrent with, expenditures for construction of the project; mitigation is no longer to come at an unspecified later time.

Exceptions to the Commission report

A new Section 2(j) has been added to the 1965 Act to direct the Secretary to implement the provisions of the Garrison Commission final report with respect to fish and wildlife conservation, including habitat impacts, mitigation procedures, and enhancement, in all but three specific areas.

First, the new Section 2(j)(1) directs that the Secretary shall take no action to alter the status of the Sheyenne Lake National Wildlife Refuge (NWR) prior to the completion of construction of Lonetree Dam and Reservoir. The lands in the refuge should be managed in their present status pending completion of construction of Lonetree Dam and Reservoir as specified in the new Section 8(a)(2) of the 1965 Act. Thus, when the Secretary addresses the question of whether or not to build Lonetree, he or she will have to consider that a national wildlife refuge would have to be vacated in order to build the dam and reservoir.

Second, a new Section 2(j)(2) directs that development and implementation of the fish and wildlife mitigation and enhancement plan for Garrison shall not be limited by the cost constraints based on estimates contained in the Garrison Commission final report. The Commission report contains a contradiction with regard to funding authority for mitigation. While directing that all impacts be fully mitigated, the report also set a limit on expenditures for mitigation and enhancement of $34,675,000. The report stated:

> In developing and implementing the mitigation plan, the implementing agencies . . . will reassess the data to arrive at a specific mitigation strategy within the limits of cost constraints based upon estimates contained in this report. (Commission Report, p. 43–44.)

The Committee has included Section 2(j)(2) to make it clear that the fish and wildlife agencies should not be constrained by the Commission's cost estimates in implementing mitigation plans. The authorization of appropriations included in this Act are the only constraint imposed on the Secretary for such expenditures. (See the discussion under the new Section 10(c) in Table 3.)

Third, a new Section 2(j)(3) prohibits the Secretary from using credit toward mitigation for reservoir sites. The Commission report recommends that mitigation credit be given for the lands which might be inundated by Lonetree Reservoir and Taayer Reservoir. The Committee has included language in H.R. 1116 that states that this credit is not authorized. As a result, an additional 35,570 acres of mitigation in excess of that recommended in the Commission report will have to be provided. The purpose of mitigation is to restore and replace wildlife habitat equivalent in quality and quantity to habitat lost by development of the project. Counting areas al-

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ready productive, and in some cases already protected, does not return lost acreage to the habitat base. The Committee recognizes that migratory bird populations are declining, in part due to habitat loses. By changing the Commission's recommendations concerning mitigation credit, the Committee is underscoring its belief that there should be no further net loss of quality habitat as a result of development of this project.

SECTION 3. IRRIGATION FACILITIES

Section 3 of H.R. 1116 adds a new Section 5 to the 1965 Act to provide authorization of the irrigation service areas.

Basic authorization

H.R. 1116 adds a new Section 5(a)(1) to the 1965 Act. This section authorizes the Secretary to develop 113,360 acres of non-Indian irrigation in the following project service areas: Turtle Lake (13,700 acres), McClusky Canal (4,000 acres), Lincoln Valley (6,515 acres), Harvey Pumping (2,000 acres), New Rockford (10,935 acres), New Rockford Canal (1,200 acres), LaMoure (13,350 acres), West Oakes Extension (4,000 acres), and West Oakes (19,660 acres). In addition, the Secretary is authorized and directed to develop up to 28,000 acres of irrigation in other areas in North Dakota not located in the Hudson Bay, Devils Lake or James River drainage basins. The Secretary is specifically prohibited from developing irrigation in these areas in excess of the acreage specified.

The Committee recognizes that it is unusual to specifically itemize the areas to be developed and the amount of acreage to be developed in each area. The Committee wants to clearly point out that the acreages specified in Section 5(a)(1) are to be considered the absolute limit of acreage to be developed in these areas. Any development in excess of these figures, or in areas outside those identified, is not authorized.

The Committee notes that the irrigation areas to be developed are the same as the areas identified in the Commission report with three exceptions. First, the New Rockford Extension (32,000 acres) has been dropped. Second, a small amount of irrigation in the West Oakes Extension (4,000 acres) has been added. Third, authority to develop 28,000 acres outside the Hudson Bay, Devils Lake and James River drainage basins has been added (the "undesignated area"). The New Rockford Extension was deleted to lessen the impact of irrigation return flows on the James River. The West Oakes Extension and undesignated areas were added to allow the development of 113,360 acres of non-Indian irrigation, as specified by the Commission.

The Committee expects the 28,000 acre undesignated area to be carefully selected by the Secretary to ensure that the irrigated lands are not located in the Hudson Bay, Devils Lake and James River basins. In addition, any canalside irrigation along the McClusky Canal would be prohibited unless return flows drain into the Missouri River.

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Irrigation construction moratorium

The new Section 5(a)(2) of the 1965 Act would prohibit the Secretary from obligating any funds for construction of irrigation service facilities in the areas listed in Section 5(a)(1) prior to September 30, 1990. After that date, the Secretary may obligate construction funds only after completing and submitting to the Congress the report required by Section 5(c). A total of $100 million in authorization of appropriations is provided by Sec. 8 of H.R. 1116 for construction in irrigation areas to proceed after September 30, 1990, assuming that the report on the James River is submitted and new repayment contracts have been executed and confirmed. (See the discussion under Section 10(a) in Table 3.)

This moratorium on construction of irrigation service areas has been imposed so that the Secretary and Congress have an opportunity to thoroughly review the James River study (Section 5(c)) before making any irretrievable commitments of Federal funds. During this period, new repayment contracts will be executed with the affected irrigation districts and new ability to pay calculations will be made. The Committee notes that the construction moratorium does not apply to the Oakes Test Area (see the new Section 5(b)(2)).

Construction of supply works

H.R. 1116 adds a new Section 5(b) to the 1965 Act which outlines how the Secretary is to proceed with construction of the remaining principal supply works. Section 5(b)(1) would prohibit the Secretary from constructing the Sykeston Canal, James River Feeder Canal and James River channel improvements until after the James River study (Section 5(c)) is completed and submitted to Congress. The Secretary is directed, however, to proceed immediately with construction of the New Rockford Canal, the Oakes Test Area and all the municipal and industrial water supply features authorized by the new Section 7 of the 1965 Act.

The Committee recognizes that Section 5(b)(1) could mean up to a two year moratorium on construction of the Sykeston Canal, James River Feeder Canal and James River channel improvements. However, it is essential that the Congress and the public know what the impacts of this new project will be on the James River before construction on these facilities is initiated. In addition, the capacity of the Sykeston Canal will be dependent on the outcome of the James River study. Therefore, construction on these supply works should be delayed until the study is completed and submitted to Congress for review.

James River report

H.R. 1116 would add a new Section 5(c) to the 1965 Act. This section would direct the Secretary to submit a comprehensive report to the Congress as soon as practicable, but no later than the end of fiscal year 1988, on the effects on the James River of the water resource development proposals contained in H.R. 1116 and the Commission report. The report would examine a series of alternatives and proposals designed to negate any flooding on the lower James River, improve water quality, lessen the need for channelization,

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and minimize or eliminate adverse impacts on National Wildlife Refuges in North and South Dakota, and while, at the same time, allowing irrigation and development.

The Committee recognizes that the project authorized by H.R. 1116 will have a significant impact on the lower James River. The Committee wants to take all necessary steps to avoid any channelization, degradation of water quality, or flooding in North and South Dakota. The Committee would point out that existing Federal statutes, such as the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act, are specifically intended to provide protectin against this type of environmental harm. In addition, South Dakota will retain its rights under State and Federal law to protect its interests in the quality and flow of the James River, an interstate stream. In an effort to avoid lengthy legal problems, a moratorium on construction of the supply works and irrigation areas has been imposed until this study is completed.

The Committee expects this study to be a comprehensive and thorough examination of the issues described in Section 5(c)(1)(A)-(G). The Committee does not expect, nor can it accept, a rehash of old information. The James River will be impacted by the project authorized in H.R. 1116. The Committee authorized this study to search for ways in which those impacts can be reduced or eliminated. The Committee expects the Secretary to seriously consider the information developed by this report and make the appropriate corrections in the project plan. A cursory effort simply to meet the requirements of this section will only compound the bitter controversies which have plagued this project for 20 years. The Committe expects and needs a thorough report examining alternative means of decreasing the impacts on the James River.

New Repayment contracts

A new Section 5(d) would be added to the 1965 Act which prohibits the Secretary from obligating funds to construct any irrigation facilities until contracts providing for appropriate repayment of the costs allocated to irrigation have been executed. These contracts must be consistent with the provisions of the Reclamation Reform Act of 1982.

The Committee expects the Secretary to ensure that all repayment obligations will be fulfilled, and that in the event of a default by a contracting entity, the Secretary can ensure repayment by some other non-Federal entity.

After the 1965 reauthorization of Garrison, a "master" contract was executed between the Secretary and the Garrison Diversion Conservancy District. In addition, a series of "subcontracts" were executed among individual irrigation districts, the United States and the Conservency District. This section requires that a new master contract and subcontracts with irrigation districts be executed because of the significant changes which have taken place in the project (particularly the addition or deletion of supply works and irrigation areas). All these contracts will have to be executed in conformity with the provisions of the Reclamation Reform Act of 1982.

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Indian irrigation

A new Section 5(e) would be added to the 1965 Act to authorize the Secretary to develop the following irrigation areas within the Fort Berthold and Standing Rock Indian Reservation: Lucky mound (7,700 acres), Upper Six Mile Creek (7,500 acres), and Fort Yates (2,380 acres). However, before beginning construction at these areas, the Secretary must first make a determination of the irrigability of these lands as required by the Act of July 31, 1953, as amended. Repayment of these irrigation areas will be made pursuant to the Leavitt Act (25 U.S.C. 396a).

The implementation of the Flood Control Act of 1944, and particularly the construction of the mainstem reservoirs, had a devastating impact on the Fort Berthold and Standing Rock Indian Reservations. Thousands of acres of productive farmland were inundated, transportation networks disrupted, and the economic base of the reservations permanently altered. The Commission expressed concern about these impacts and made a series of important recommendations to correct some long-standing problems. Most of these recommendations are now the subject of inquiry by a Secretarial commission.

The Committee agrees that there is a need to develop irrigation at these three areas to partially compensate the tribes for lands inundated by the mainstem dams and to reestablish an agricultural economic base on the reservations. For example, the Committee notes that the Commission report expressed concern that there may be problems associated with irrigating the deep glacial till soils on the Fort Berthold reservation. Accordingly, the Committee has included language requiring the Secretary to make a finding of the irrigability of these soils prior to the initiation of any construction.

Drainage prohibition

The bill would add a new Section 5(f) to the 1965 Act which would prohibit the Secretary from permitting the use of project facilities for non-project drainage not included in the project design or required for project operations.

The Committee included this provision because it was concerned that project facilities (such as canals or laterals, including existing facilities) could be used by adjacent landowners to drain wetlands where such drainage was not included as part of the project plan. This section makes it clear that the Secretary is not to allow adjacent landowners to use project facilities to drain wetlands where such drainage has not been planned as part of the project and its operations. However, the Committee recognizes that there will be instances where project facilities will intercept previously existing drains or natural watercourses, and such flows will be incorporated in project design.

SECTION 4. POWER

Section 4 of H.R. 1116 would add a new Section 6 to the 1965 Act dealing with several public power provisions.

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Use of Pick-Sloan power

The new Section 6(a) would authorize the Secretary of Energy to make available power generated from the Pick-Sloan Missiouri Basin Program to the municipal, rural, and industrial (MR&I) water systems constructed with funds made available under this Act.

This section has been included to provide clear legislative authority for the MR&I systems financed with funds made available by the Act to use Pick-Sloan power. According to the Department of Energy, it is unclear whether the 1944 Act authorizes the use of Pick-Sloan power for this purpose. This section will clarify this authority. The rates to be charged for such power will be established by the Secretary of Energy using normal policies and procedures.

Repayment of irrigation assistance

The new Section 6(b) makes a number of changes in the repayment of irrigation assistance by power consumers. This section provides that the costs allocated to irrigation which are beyond the irrigator's ability to repay may be repaid from power revenues. However, such repayment by power may not exceed 40 years from the year in which irrigation water is first delivered for use by the district and shall be made in equal annual installments. The last sentence applies only to investments in facilities made after the date of enactment of this Act; it does not apply to any of the funds previously appropriated for construction of the Garrison Diversion Unit.

Section 302(a)(3) of the Department of Energy Organization Act provides that no "changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress." [8] It is likely that the deauthorization of over 900,000 acres of irrigation will result in those acres no longer being used to determine power rates in the Pick-Sloan program. The Committee has included language in the new Section 6(b) to make it clear that "reallocation of joint costs" can be made, notwithstanding the provisions of the DOE organization act.

The major change in this section from existing law is that the repayment of the costs of irrigation facilities repaid from power revenues will be made in a period *not to exceed* 40 years from the year in which irrigation water is first delivered for use by the contracting party. Under the existing policy in the Pick-Sloan, irrigation assistance for Garrison was slated to be repaid around the year 2050. Since the costs of irrigation are carried at zero interest, the present value of repayment under the existing policy is minimal. Therefore, the Committee has added this section which will require that all the costs allocated to irrigation, including that repaid from power revenues, will be repaid in 40 years.

In addition, the new Section 6(b) will require that the cost of irrigation repaid from power revenues must be made "in equal annual installments." The Committee expects the Secretary to develop the

[8] U.S.C. 7152(a)(3).

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appropriate regulations to implement this section. In preparing these regulations, the Secretary should balance the need for annual repayment against the need to provide flexibility in years when insufficient water supplies decrease power generation.

Delaying rate increases attributable to deauthorization of irrigation

H.R. 1116 also adds a new Section 6(c) to the 1965 Act. This section would provide that if as a result of deauthorizing over 900,000 acres of irrigation in the Garrison Diversion Unit, power rates in the Pick-Sloan must be increased, the increase will only occur after: (1) full use has been made of the "5-year window" method of ratesetting and (2) the resulting rate increase, if any, is made in equal amounts over a ten year period beginning on the date of any reallocation. Costs other than irrigation reallocated as a result of deauthorizing irrigation areas will be repaid, if reimbursable, at the interest rate specified in Section 4(b) of the 1965 Act. Nothing in the Act shall alter or affect the current repayment methodology for other features of the Pick-Sloan program.

This section was included to stretch out over a 10 year period the impact of any power rate increase that would result from the deauthorization of irrigation areas. The Committee recognizes that deauthorizing irrigation areas willl likely delete Garrison acreage from the current ratesetting calculations. This could lead to an increase in power rates. If this is the case, the increase will be stretched out over a 10 year period.

SECTION 5. MUNICIPAL, RURAL, AND INDUSTRIAL WATER SERVICE

Section 5 of H.R. 1116 would add a new Section 7 to the 1965 Act to authorize the construction of municipal, rural, and industrial (MR&I) water service facilities throughout North Dakota.

Municipal, Rural, and Industrial Water System Grant Program

The bill would add a new Section 7(a) to the 1965 Act. This section authorizes a grant program whereby the State of North Dakota will undertake to construct municipal, rural, and industrial water systems throughout the State. All MR&I systems planned, designed, constructed and operated under authority of this section will be done in accordance with a cooperative agreement between the Secretary and the State of North Dakota. The agreement will outline the State's responsibilities for project planning, design, construction and operation. After execution of the cooperative agreement, the Secretary is authorized to convey without reimbursement, up to $200 million for construction of MR&I water systems. The non-Federal share of the total cost to construct each water system shall be not less than 25 percent, committed prior to construction. The Federal government is not authorized to make any contributions to operation, maintenance or replacement of these MR&I systems. The Southwest Pipeline Project, now under construction by the State, is eligible to receive funds under this section.

The Garrison Commission final report recommended a $400 million MR&I program to meet the water supply needs of 130 towns

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and rural areas throughout the State. This program was a cornerstone of the reformulated project recommended by the Commission.

The Commission agrees with the need to authorize a comprehensive MR&I program in North Dakota. There is little doubt, based on the Commission's work, that towns and rural areas throughout the State do not have reliable, high quality water supply systems. However, the Committee agrees with the State of North Dakota that an effective program can be undertaken for $200 million. The program whch is authorized by this section will provide the necessary funding to meet these critical needs.

The program authorized by this section represents a significant departure from past efforts to fund MR&I water supply systems. The program is a 75-25 grant program in which the Secretary maintains oversight of the program. All the planning, design, construction and operation of the water supply systems will be carried out by the State of North Dakota. This represents a unique and cost effective solution for implementing this program.

The Committee points out that H.R. 1116, and this report, refers to the "municipal and industrial" water supply systems authorized by the bill as "municipal, *rural,* and industrial" systems. This is consistent with the recommendations of the Garrison Commission report. The reference to "rural" is intended to make it clear that the Secretary has authority to deliver water to rural areas, as well as cities, towns, and industries. This is an especially important distinction where water is critically needed for stock watering and farmsteads.

Sheyenne River release facility

H.R. 1116 would add a new Section 7(b) to the 1965 Act. This section authorizes and directs the Secretary to construct, operate and maintain a Sheyenne River water supply and release feature, including a water treatment plant, capable of delivering 100 cfs of water for the cities of Fargo, Grand Forks and surrounding communities. The costs of constructing, operating, maintaining and replacing this feature, exclusive of conveyance works associated with the treatment plant, shall be nonreimbursable.

The provision was recommended by the Commission as an important component in the program for meeting the State's MR&I water supply needs. The Committee recognizes that it is unusual for the Federal government to construct, operate and maintain features for the water supply of local communities. However, this facility is essential to meeting the needs of over one-third of the State's population, and international treaty obligations.

The Committee notes that this facility should be designed so that up to 100 cfs of water will be delivered, even in dry years, to Fargo, Grand Forks and surrounding communities. Thus, the amount of water released into the river at the facility will be in excess of 100 cfs.

Indian M&I

H.R. 1116 would amend the 1965 Act by adding a new Section 7(c). This section would authorize and direct the Secretary to construct, operate and maintain such municipal, rural, and industrial water systems as he or she deems necessary to meet the economic,

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public health and environmental needs of the Fort Berthold, Standing Rock and Fort Totten Indian Reservations.

The Committee wishes to point out that this provision authorizes *and directs* the Secretary to meet the MR&I water needs of these reservations. Testimony received by the Committee clearly shows that there is an immediate need for improved water supply systems. Current reservation systems do not meet minimal public health standards. In addition, there is insufficient supply for stock and other domestic requirements. The Committee urges the Secretary to give these MR&I facilities high priority.

The Committee would note that the authority for these systems was an integral part of the compromise surrounding this legislation. Therefore, it is recommended that the funding for these facilities be carried as part of the construction funding for the Garrision project. Too often in the past, funding for Indian water projects, and particularly MR&I systems, are given very low priority in comparison to non-Indian irrigation projects. The Committee would note that these facilities will meet *immediate* public health concerns. Funding for these systems should be requested and provided concurrent with funding for the non-Indian portions of the project.

Finally, the Committee would note that funding for these projects is the responsibility of the Federal government. It is not intended that construction and operation of these facilities be contingent on repayment by the tribes.

This authorization pertains only to the MR&I systems necessary to meet the needs of the reservations. Any project for Indian economic development requiring substantial withdrawals of Missouri River water for off-reservation use would require a separate Act of Congress.

Compliance with Boundary Waters Treaty

The bill would add a new Section 7(d) to the 1965 Act. This provision requires that any municipal, rural and industrial water supply systems built with funds authorized in this Act may deliver Missouri River water into the Hudson Bay drainage only after the Secretary, in consultation with the Secretary of State and the Administrator of EPA, has determined that adequate treatment has been provided so that the water delivered meets the requirements of the Boundary Waters Treaty.

This provision will ensure that any MR&I water, originating in the Missouri River drainage, which is transported into the Hudson Bay drainage will not violate the water quality provisions of the Boundary Waters Treaty. The Government of Canada has expressed concern for over a decade about possible biota transfer resulting from interbasin transfers. This provision will ensure that any water transferred will not pose a threat to public health or resources in Canada, not result in biota transfer, and not violate the treaty.

SECTION 6. SPECIFIC FEATURES

Section 6 of H.R. 1116 would add a new Section 8 to the 1965 Act. This section includes commentary about several controversial water supply or storage features which are part of the project.

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Sykeston Canal

The new Section 8(a)(1) would authorize the Sykeston Canal as a functional replacement for the Lonetree Dam and Reservoir. Sykeston is to be designed and constructed to meet only the water delivery requirements of the non-Indian irrigation and MR&I water supply needs authorized in this Act. Sykeston is to be located, constructed and operated so that in the opinion of the Secretaries of State and Interior there is no violation of the Boundary Waters Treaty. The Secretary may not commence construction on the Canal until a new master repayment contract has been executed between the United States and the appropriate non-Federal entity.

The major controversy surrounding Garrison for the last ten years has involved Lonetree Dam and Reservior. The Commission affirmatively rejected a project plan which included Lonetree, and instead recommended that Sykeston Canal be constructed as a functional replacement for Lonetree. The Committee agrees and has included this section to authorize the construction of Sykeston. However, Sykeston is to be sized so that it is only large enough to meet the needs of the project authorized by this Act. Thus, Sykeston will be sized to serve the non-Indian irrigation and MR&I development which requires the facility, at the most. It could be that Sykeston will be sized to a lesser capacity, depending on final determinations as to the amount and location of non-Indian irrigation. The Committee realizes that the McClusky Canal has been constructed to a much larger size than Sykeston, and that the New Rockford Canal, which is under construction, will be built to a size larger than necessary to serve the project authorized by H.R. 1116. Those facilities were constructed to meet the needs of the 250,000 acre plan which has been deauthorized. The exact size of Sykeston will be determined by the Secretary after completion of the James River report and other studies.

The Committee is concerned that the location, construction and operation of Sykeston could lead to a violation of the Boundary Waters Treaty. Therefore, language has been included to make it clear that Sykeston must be constructed so that it will not raise international problems similar to those which have plagued Lonetree.

Finally, the bill provides that construction on Sykeston Canal cannot be initiated until a new master repayment contract has been executed between the United States and the appropriate non-Federal entity. This provision has been included to ensure that a signed repayment contract will be executed before the Secretary initiates construction on this facility. Sykeston canal is a vital link in the water supply system for the Garrison project. It is absolutely essential that the Federal government be assured of repayment before construction is initiated.

Lonetree Dam and Reservoir

The new Section 8(a)(2) provides that Lonetree Dam and Reservoir shall remain an authorized feature of the Garrison Diversion Unit. However, construction funds may be requested by the Secretary for Lonetree only after three events have taken place. First, the Secretary has determined that Lonetree is needed based on a

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contemporary appraisal using procedures for feasibility studies. Second, consultations with Canada have reached the point where the Secretary of State, after consulting with the Administrator of EPA, has determined that there is no violation of the Boundary Waters Treaty. Third, the Secretaries of the Interior and State have submitted to the Congress the required determinations and 90 calendar days have elapsed.

The Committee agrees with the recommendation made by the Commission that Lonetree should remain an authorized project feature. However, the Committee has imposed several major requirements on the Secretaries of the Interior and State before construction on Lonetree can be initiated.

The first constraint means that the Secretary will have to find that Lonetree Dam and Reservoir are needed using contemporary appraisal procedures required in feasibility studies for projects submitted to Congress. This constraint is included to make it clear that any future decision to build Lonetree will be made only after a thorough and careful review using up-to-date planning methodologies and analytical techniques. Because Lonetree has been such a controversial issue, any future decision to build the dam and reservoir should be thoroughly justified.

Second, the Committee recognizes that Lonetree could have an impact on water quality in the Hudson Bay drainage. Lonetree should only be built if the Secretary of State, after consulting with the Administrator of EPA, has determined that no violation of the Boundary Waters Treaty will occur. The Committee notes that this decision is to be made by the Secretary of State, independent of any views the Interior Department may have regarding the need for Lonetree. In addition, this decision will be reached after consultations with the Government of Canada. Any decision to build Lonetree will have foreign policy implications and the Secretary of State should be free to make his or her decision independently.

Third, the section requires that no construction can take place on Lonetree until the determinations required of the Secretaries of the Interior and State have been transmitted to Congress for a 90 day review period. This will allow the Congress time to review the Secretaries' determinations and take whatever action is deemed appropriate.

In addition, to these three constraints, the Committee would note that as indicated in Section 8 of H.R. 1116, no funds are authorized to be appropriated for construction of Lonetree Dam and Reservoir. Such authorization will have to be provided by a future Congress.

Taayer Reservoir

A new Section 8(b) would be added to the 1965 Act. This section would deauthorize Taayer Reservoir and direct the Secretary to acquire up to 5,000 acres in the Kraft and Pickell Slough areas and to manage the area as a component of the national wildlife refuge system giving consideration to the unique wildlife values of the area. In acquiring lands for this wildlife complex, the Secretary is authorized to acquire wetlands in the immediate area which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the area. The Secretary is au-

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thorized to provide for appropriate visitor access and control at the refuge.

The Taayer Reservoir would have inundated a significant wildlife habitat area which is important for migratory waterfowl production. The Commission recommended that the reservoir be deauthorized and the surrounding area protected for its wildlife values. The Committee agrees with this recommendation. Accordingly, this section was included to deauthorize the reservoir and authorize acquisition and management of the surrounding area for its wildlife values.

The Committee would note that the Secretary is provided with discretion in order to acquire the necessary wetlands. the Secretary may not purchase more than 5,000 acres in the general vicinity of the Kraft and Pickell Slough areas, or areas hydrologically related, such as Big, Bruns or Mezarros Sloughs for the Refuge. The Secretary does have the discretion to decide which areas should be acquired and where, including purchase of slough areas or adjacent uplands. The objective of these purchases should be the establishment of a manageable National Wildlife Refuge of no more than 5,000 acres which protects the wildlife resources. However, the Committee would note that additional acreage surrounding the Refuge may be purchased as mitigation.

SECTION 7. EXCESS CROPS

Section 7 of H.R. 1116 would add a new Section 9 to the 1965 Act dealing with the issue of surplus crop production.

The new Section 9 would provide that until the construction costs of the irrigation facilities are repaid, the Secretary is required to charge a "surplus crop production charge" for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The amount of the charge is to equal 10 percent of "full cost" as that term is defined in Section 202(3)(A)-(C) of the Reclamation Reform Act of 1982 (RRA). The Secretary is required to announce the amount of this charge by July 1 of the year preceding the assessment of any such charge.

In the past, the Committee has included language in Reclamation project authorizations to prohibit the delivery of project water for a period of 10 years after the date of authorization of a project for the production of basic agricultural commodities in surplus supply. Section 7 of H.R. 1116 uses a different approach. The provision would require that the Secretary charge a "surplus crop production charge" equal to 10 percent of "full cost" (as defined in the RRA), for any water used to grow surplus crops until the costs allocated to irrigation have been repaid (40 years). The Committee notes that this charge is in addition to any other charges required of irrigators. Thus, this charge would not be included in any ability to pay calculations made for the project. In addition, the charge is calculated and assessed against the district, not against the individual irrigators. Thus, the district is free to determine how the charge will be assessed against individual irrigators.

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The Committee would note that this charge would only be assessed for the production of those crops determined by the Secretary of Agriculture to be basic agricultural commodities; currently, these are: cotton, corn, rice, barley, wheat, sorghum, and oats. This provision would not change in any way the manner or timing of the Agriculture Secretary's determination of whether a basic agricultural commodity is in surplus supply. That determination is made according to general agricultural statutes which are not modified or amended by this bill.

The committee has included a provision to require that the Secretary of the Interior make the determination of how much the "surplus crop production charge" will be by July 1 of the year preceding its assessment. This will provide irrigators with the information necessary to make appropriate decisions of whether or not to grow a crop which might be in surplus.

SECTION 8. AUTHORIZATION OF APPROPRIATIONS

Section 8 of H.R. 1116 would add a new Section 10 to the 1965 Act which provides authorization of appropriations for the planning, construction and operation of the reauthorized Garrison Diversion Unit.

Overview

As noted in Table 2, the total cost of the revised Garrison Diversion Unit is $1,177,480,910. By comparison, the total cost of the 1965 project, plus the Commission recommendations, is $1,986,360,000. Approximately $275 million has been spent to date on the project. Thus, an additional $902 million will be required to complete the project. However, the Committee has only authorized appropriation of $680 million for the reasons set forth below. (Table 3 presents a complete presentation of the funds authorized and the cost to complete the various elements of the project.)

Irrigation and supply works

The new Section 10(a) would authorize the appropriation of $338,305,000 for carrying out the purposes of Section 5 (irrigation and supply works) and Section 8(a)(1) (Sykeston Canal). These funds would remain available until expended.

The Committee notes that these funds would provide sufficient authorization for the construction of all the supply works and only $100 million of the total $322 million required to complete construction of the irrigation service facilities. This will mean that an increase in authorizations will be required in order to complete the irrigation service areas, as authorized by H.R. 1116. The Committee believes this is the best way to ensure oversight of the construction progress on the project.

In addition, the Committee would note that the authorization of appropriation figures are *not* indexed to increase with inflation. The authorization of appropriations are not indexed in order to force additional enactment of authorizations at some future date. This will ensure the proper oversight and involvement of the authorizing committees.

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Other authorizations

The new Section 10(b) would authorize appropriation of $200 million to finance the grant program with the State of North Dakota to finance the municipal, rural and industrial water supply systems. This section would also authorize $20,500,000 for the Indian MR&I water systems, and $40,500,000 for the Sheyenne River release facility. These funds would remain available until expended.

The new Section 10(c) would authorize $80,535,000 to carry out all the other purposes of this Act. This figure includes: $5,490,000 for recreation facilities; $39,545,000 for fish and wildlife mitigation and enhancement; $3,500,000 for acquisition of Kraft Slough; $12,000,000 for the contribution to the Wetland Trust; and, $20,000,000 for permanent operating facilities.

The Committee would reiterate that the funds authorized in Section 10(b) and 10(c) also are *not* indexed for the reasons cited above.

Finally, the new Section 10(d) provides that any funds previously appropriated for the Garrison Diversion Unit may be expended to carry out any of the provisions of H.R. 1116. Such expenditures, however, would have to be obligated consistent with the provisions of H.R. 1116.

TABLE 2.—GARRISON DIVERSION UNIT REFORMULATION COST SUMMARY

Category	Total cost to complete	Appropriations authorized
Section 10(a):		
Non-Indian irrigation areas	$322,400,000	[1] $100,000,000
Indian irrigation	67,910,000	67,910,000
Supply Works	170,395,000	[2] 170,395,000
Subtotal section 10(a)	560,705,000	338,305,000
Section 10(b):		
M&I Water Supply	200,000,000	200,000,000
Sheyenne River Facility	40,500,000	40,500,000
Indian MR&I	20,500,000	20,500,000
Subtotal Section 10(b)	261,000,000	261,000,000
Section 10(c):	80,535,000	80,535,000
Total authorized by sections 10(a)–(c)	902,240,000	679,840,000
Sunk costs to date	275,240,000	
Total project cost	1,177,480,910	

[1] Funds cannot be obligated until 1990.
[2] Funds for Sykeston, James River Feeder Canal and James River channel improvements cannot be obligated until the study required by section 5(c) is completed.

TABLE 3.—AUTHORIZATION OF APPROPRIATIONS IN H.R. 1116

Item	Total cost to complete	Appropriations authorized
Section 10(a):		
1. Irrigation service areas		
Turtle Lake area	$37,200,000	
McClusky Canalside area	10,340,000	
Lincoln Valley area	20,400,000	
Lincoln Valley drains	13,200,000	
Harvey Pumping area	5,800,000	

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TABLE 3.—AUTHORIZATION OF APPROPRIATIONS IN H.R. 1116—Continued

Item	Total cost to complete	Appropriations authorized
New Rockford area	54,900,000	
New Rockford Canalside area	3,100,000	
LaMoure area	33,400,000	
West Oakes area	26,900,000	
West Oakes extension area	13,560,000	
Oakes Canal	2,800,000	
28,000 Acre area	100,800,000	
Subtotal	322,400,000	[2] $100,000,000
2. Indian irrigation areas	67,910,000	67,910,000
3. Project water supply features:		
James River comprehensive study	6,300,000	
Sykeston Canal	[1] 31,200,000	
Snake Creek pumping plant	1,015,000	
McClusky Canal	21,800,000	
Lonetree Dam foundation work	5,480,000	
Oakes test area	4,600,000	
New Rockford Canal	32,800,000	
James River Feeder Canal	2,500,000	
Glover Reservoir	43,000,000	
James River channel work	21,700,000	
Subtotal	170,395,000	[2] 170,395,000
Total for section 10(a)	560,705,000	338,305,000
Section 10(b):		
MR&I Grant Program with State of North Dakota M&I Plan	200,000,000	200,000,000
Sheyenne River release facility	40,500,000	40,500,000
Indian MR&I water systems	20,500,000	20,500,000
Total for section 10(b)	261,000,000	261,000,000
Section 10(c):		
Recreation	5,490,000	5,490,000
Fish and Wildlife mitigation and enhancement	39,545,000	39,545,000
Kraft Slough acquisition	3,500,000	3,500,000
Wetlands trust	12,000,000	12,000,000
Permanent operating facilities	20,000,000	20,000,000
Total for section 10(c)	80,535,000	80,535,000

[1] This estimate assumes Sykeston will be built at its largest capacity. Further design changes are expected to reduce the cost of the facility.
[2] The allocation of funds authorized to be appropriated for the principal supply works and the irrigation service areas is left to the discretion of the Secretary.

SECTION 9. WETLANDS TRUST

Section 9 of H.R. 1116 would add a new Section 11 to the 1965 Act to establish a wetlands Trust.

Funding for the trust

The new Section 11(a) of the 1965 Act would establish the funding mechanism for the Wetlands Trust. The Secretary is directed to make an annual Federal contribution to the Wetlands Trust from the sums appropriated under Section 10 of the 1965 Act. The amount of the contribution shall be as follows: (1) for fiscal year 1986, $2 million; (2) for each of the fiscal years 1987 through 1990, 3 percent of the total amount appropriated under Section 10 of this Act, but not to exceed $500,000 for each such year; and, (3) for each

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fiscal year after 1990, 5 percent of the amount appropriated under Section 10, but only if the State of North Dakota provides at least 10 percent of the total contributions to the Trust for such years. The amount and manner of the State contribution will be determined through an agreement between the Governor and the Secretary. However, the total Federal contribution pursuant to this Act shall not exceed a total of $12 million.

This funding mechanism was established as a means of providing a total Federal contribution of no more than $12 million to the Wetlands Trust. This total contribution, however, will be contributed in a gradual basis with an initial $2 million contribution coming from FY1986 funds. Up to an additional $500,000 per year would come between fiscal years 1987 through 1990. After 1990, the Federal contributions may be made only if the State has agreed to contribute 10 percent of the total Federal contribution to the Trust (i.e., $1.2 million). State basis. In addition, after 1990, the amount contributed by the Federal government may not exeed 5 percent of the total amount appropriated for under authority of Section 10.

This $12 million contribution, derived on an incremental basis, will provide a trust from which revenues may be derived to finance the activities of the Wetlands Trust.

Trust established

The new Section 11(b) would establish the Wetlands Trust. In order to qualify for the Federal contribution made under Section 11(a), the Trust must meet the following requirements:

—It must be established as a non-profit corporation under the laws of North Dakota;
—It must be under the direction of a Board of Directors who are responsible for managing the Trust's affairs;
—The Board of Directors must be comprised of 6 persons, each appointed for a 2 year term, with three directors appointed by the Governor, one by the National Audubon Society, one by the National Wildlife Federation, and one by the North Dakota Chapter of The Wildlife Society;
—Members shall serve without compensation; and,
—The corporate purposes of the Trust shall be to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in North Dakota.

Operation of the trust

The new Section 11(c) outlines how the Wetlands Trust will be operated. The Trust shall be deemed to be operating in compliance with this section when the following requirements are met:

—The Trust is operated in compliance with its corporate purposes;
—The Trust has authority to exercise the power to acquire land (including interests in land) and water rights, but only with the consent of owners and the Governor;
—The Trust is empowered to finance wetland preservation, enhancement, restoration and management or wetland habitat programs;
—The Trust invests all funds available to it in a business like manner;

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—The Trust does not obligate any of the principal of the funds available to it; and,
—The Trust agrees to provide such reports as may be required by the Secretary or the Governor and makes its records available for audit by State and Federal agencies.

Investment of funds

The new Section 11(d) directs the Secretary, in consultation with the Governor and the Secretary of the Treasury, to establish requirements for the investment of all funds received by the Trust or reinvested by it. Such requirements shall ensure that investments are made in accordance with sound investment principles and ensure that persons managing such investments will exercise their fiduciary responsibilities in an appropriate manner.

SECTION 10. SOIL SURVEYS

Section 10 of H.R. 1116 would amend the Act of July 31, 1953. The 1953 Act provides that no construction can take place on a project until the Secretary has certified to the Congress that an adequate soil survey and land classification studies have been performed, and that "the lands to be irrigated are susceptible to the production of agricultural crops by means of irrigation . . ."

Section 10 of H.R. 1116 would add a new sentence at the end of the 1953 Act. This amendment would provide that such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows. The problems arising from selenium contaminated agricultural return flows in California, and particularly Kesterson Reservoir, have been of concern to the Committee. This provision has been included to require the Secretary to determine if the soils to be irrigated by a project could result in toxic or hazardous irrigation return flows before construction begins. This report must be transmitted to Congress prior to construction and will give both the Secretary and Congress adequate warning about possible contaminated irrigation return flows.

SECTION 11. SHORT TITLE

Section 11 of H.R. 1116 provides that this Act shall be referred to as the "Garrison Diversion Unit Reformulation Act of 1986."

SECTION 12. COMPLIANCE WITH APPROPRIATIONS ACT

Section 12 of H.R. 1116 provides that this Act to reformulate the Garrison Diversion Unit shall be deemed to meet all the time and substance requirements specified in the Fiscal Year 1986 Energy and Water Development Appropriations Act (P.L. 99-141). P.L. 99-141 provided that none of the funds made available for Garrison Diversion Unit could be obligated or expended for "construction (including land acquisition) . . . unless the Congress has, prior to March 31, 1986, enacted legislation reformulating the Unit . . ."

Section 12 specifies that H.R. 1116 meets the time and substance requirements of P.L. 99-141.

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III. Budget Effects of the Bill

A. COMMITTEE ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the following statement is made: The Committee agrees with the cost estimate prepared by the Congressional Budget Office which is included below. This estimate indicates that the bill will result in outlays of $297 million through 1991. It is estimated another $380 million in outlays would be incurred between 1992 and 1996.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives, the Committee advises that the Congressional Budget Office cost estimate included below indicates that there are $679.83 million in appropriations authorized by the bill. However, unlike previous Reclamation project authorization bills, this authorization of appropriations is not indexed.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office (CBO), the following report prepared by CBO is provided:

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 8, 1986.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1116, the Garrison Diversion Reformulation Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner,
Director.

April 8, 1986.

1. Bill number: H.R. 1116.
2. Bill title: Garrison Diversion Reformulation Act of 1986.
3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, March 19, 1986.
4. Bill purpose: H.R. 1116 would modify the Garrison Diversion Unit project in accordance with certain recommendations contained in the Final Report of the Garrison Diversion Unit Commission.

The bill would reduce the area to be irrigated from 250,000 acres to 130,000 acres and would deauthorize all features of the original

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project, except Lonetree Reservoir, for which no funds have been appropriated and which are not recommended for construction in the commission report. Construction of nine irrigation features plus the development of an additional 28,000 acres on non-Indian lands and three irrigation features on Indian lands would be authorized.

The bill would make non-reimbursable the costs of facilities that are already built but which would, under the terms of this bill, not be used to full capacity. Construction of the James River irrigation features would be prohibited until at least fiscal year 1991 and only after the Department of the Interior completes a water development study and signs new repayment contracts. Construction of New Rockford Canal and certain test areas would be allowed to proceed prior to meeting these conditions.

The bill would authorize the construction of a municipal and industrial water supply system to serve certain North Dakota communities and irrigation and water supply facilities on certain Indian lands in North Dakota.

H.R. 1116 would authorize the appropriation of $100 million for non-Indian irrigation, $67.91 million for Indian irrigation, $170.395 million for irrigation water supply, $200 million for municipal and industrial water supply and $141.535 million for other specified purposes.

The bill would also: impose a surcharge on water used to irrigate surplus crops; establish a Wetlands Trust to preserve wildlife habitat in North Dakota; adopt certain commission recommendations regarding fish and wildlife mitigation; preserve certain water rights of the State of North Dakota, and require that any future irrigation investments in the Garrison project that would be recovered through federal hydropower revenues be repaid to the Treasury in equal annual installments within 40 years after the in-service date.

IV. Other Matters Required To Be Discussed Under the Rules of the House of Representatives

A. VOTE OF THE COMMITTEE

In compliance with clause 2(1)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made: the bill H.R. 1116 was ordered favorably reported to the House of Representatives by voice vote.

There were, however, two amendments to the bill which were the subject of recorded votes. The first amendment, offered by Mr. Sharp, would have required that the "surplus crops production charge" required as a result of section 7 of H.R. 1116 should be 100 percent of "full cost" (as defined by the Reclamation Reform Act of 1982), rather than 10 percent of full cost. The amendment was defeated by a vote of 28 to 7.

The second amendment, also offered by Mr. Sharp, would have required an act of Congress to lift the moratorium on construction of principal supply works. (See section 3 of H.R. 1116.) This amendment was defeated by a vote of 23 to 12.

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B. OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee reports that the need for this legislation has been confirmed by the oversight findings of the Subcommittee on Water and Power Resources. As noted in the previous sections, the Subcommittee has been following closely developments with the project, and held oversight hearings on February 28, 1985.

C. OVERSIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings and recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill. However, the Committee would note that the Governments Operations Committee did issue a report on the Garrison Unit in 1976 (House Report 94-1335). This report addressed all the problems with the project as they were known in the mid-1970's, especially the international problems.

Another report of the Government Operations Committee (House Report 94-852, 94th Congress, 2nd Session) addressed the Bureau of Reclamation's procedures for indexing project costs. The Garrison Diversion Unit was among those projects investigated by the Committee in its report.

D. INFLATION IMPACT

In compliance with clause 2(1)(4) of Rule XI of the House of Representatives, with regard to the inflationary impact of the reported bill, the Committee believes that the bill will not have an inflationary impact on national prices or costs.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF AUGUST 5, 1965

AN ACT To make certain provisions in connection with the construction of Garrison diversion unit, Missouri River Basin project, by the Secretary of the Interior.

SEC. 1. [That the general plan for the Missouri-Souris unit of the Missouri River Basin project, heretofore authorized in section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887), as modified by the report of the Secretary of the Interior contained in House Document Numbered 325, Eighty-sixth Congress, second session, is confirmed and approved under the designation "Garrison diversion unit," and the construction of a development providing for the irrigation of two hundred and fifty thousand acres, municipal and industrial water, fish and wildlife conservation and development, recreation, flood control, and other project purposes shall

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be prosecuted by the Department of the Interior substantially in accordance with the plans set out in the Bureau of Reclamation report dated November 1962 (revised February 1965) supplemental report to said House Document Numbered 325.] *(a) The Congress declares that the purposes of this Act are to:*

(1) implement the recommendations of the Garrison Diversion Unit Commission Final Report (dated December 20, 1984) in the manner specified by this Act;

(2) meet the water needs of the State of North Dakota, including municipal, rural and industrial water needs, as identified in the Garrison Diversion Unit Commission Final Report;

(3) minimize the environmental impacts associated with the construction and operation of the Garrison Diversion Unit;

(4) assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909;

(5) assure more timely repayment of Federal funds expended for the Garrison Diversion Unit;

(6) preserve any existing rights of the State of North Dakota to use water from the Missouri River; and,

(7) offset the loss of farmland within the State of North Dakota resulting from the construction of major features of the Pick-Sloan Missouri Basin Program, by means of a Federally-assisted water resource development project providing irrigation for 130,940 acres of land.

(b) The Secretary of the Interior (hereafter referred to as "the Secretary") is authorized to plan and construct a multi-purpose water resource development project within the State of North Dakota providing for the irrigation of 130,940 acres, municipal, rural, and industrial water, fish and wildlife conservation and development, recreation, flood control, and other project purposes in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and substantially in accordance with the plans set out in the Garrison Diversion Unit Commission Final Report dated December 20, 1984.

(c) Nothing in this Act is intended, nor shall be construed, to preclude the State of North Dakota from seeking Congressional authorization to plan, design, and construct additional Federally-assisted water resource development projects in the future.

(d) Nothing in this Act shall be deemed to diminish the quantity of water from the Missouri River which the State of North Dakota may beneficially use, pursuant to any right or rights it may have under federal law existing immediately before the date of enactment of this Act and consistent with the treaty obligations of the United States.

(e) The authorization for all features of the Missouri-Souris Unit of the Pick-Sloan Missouri Basin Program located in the State of North Dakota, heretofore authorized in section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 891), for which no funds have been appropriated for construction, and which are not authorized for construction by this Act, is hereby terminated, and sections 1 and 6 of the Act of August 5, 1965 (P.L. 89-108, 79 Stat. 433) are hereby repealed.

(f) In implementing the provisions of this Act, the Secretary is directed to construct all supply works to the capacity identified in the

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Garrison Diversion Unit Commission Final Report, except that the Secretary is directed to construct the James River Feeder Canal to a capacity of no more than 450 cubic feet per second, and the Sykeston Canal to the capacity specified in Section 8(a)(1) of this Act.

(g) Any investment related to features constructed by the Secretary that are no longer employed to full capacity pursuant to the recommendations of the Garrison Diversion Unit Commission Final Report shall be nonreimbursable.

SEC. 2. (a) * * *

* * * * * * *

(i) Notwithstanding any other provisions of this section, the mitigation for fish and wildlife losses incurred as a result of construction of the project shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

(j) The Secretary is directed to implement the provisions of the Garrison Diversion Unit Commission Final Report with respect to fish and wildlife conservation, including habitat impacts, mitigation procedures, and enhancement, except for the following:

(1) The Secretary shall take no action to alter the status of Sheyenne Lake National Wildlife Refuge prior to the completion of construction of Lonetree Dam and Reservoir.

(2) Development and implementation of the mitigation and enhancement plan for fish and wildlife resources impacted by construction and operation of the Garrison Diversion Unit shall not be limited by the cost constraints based on estimates contained in the Garrison Diversion Unit Commission Final Report.

(3) Credit toward mitigation recommended by the Garrison Diversion Unit Commission Final Report for reservoir sites is not authorized.

SEC. 3. The Garrison diversion unit shall be integrated physically and financially with the other Federal works constructed or authorized to be constructed under the comprehensive plan approved by section 9 of the Act of December 22, 1944, as amended and supplemented. The Secretary shall give consideration to returning to the Missouri River to the fullest extent practicable such of the return flows as are not required for beneficial purposes.

SEC. 4. (a) The interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the Garrison diversion unit as authorized in this Act shall be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

(b) From and after July 1, 1965, the interest rate on the unamortized balance of the investment allocated to commercial power in facilities constructed or under construction on June 30, 1965, by the Department of the Army in the Missouri River Basin, the commercial power from which is marketed by the Department of the Interior, and in the transmission and marketing facilities associated therewith, shall be 2½ per centum per annum.

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SEC. 5. [For a period of ten years from the date of enactment of this Act, no water from the project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.] *(a)(1) Subject to the provisions of subsection (a)(2) of this section, the Secretary is authorized to develop irrigation in the following project service areas: Turtle Lake (13,700 acres), McClusky Canal (4,000 acres), Lincoln Valley (6,515 acres), Harvey Pumping (2,000 acres), New Rockford (20,935 acres), New Rockford Canal (1,200 acres), LaMoure (13,350 acres), West Oakes Extension (4,000 acres), and West Oakes (19,660 acres). The Secretary is prohibited from developing irrigation in these areas in excess of the acreage specified herein, except that the Secretary is authorized and directed to develop up to 28,000 acres of irrigation in other areas in North Dakota, not located in the Hudson Bay, Devils Lake, or James River drainage basins.*

(2) The Secretary is prohibited from obligating any funds for construction of irrigation service facilities in the areas listed in subsection (a)(1) of this section prior to September 30, 1990. After that date, the Secretary may obligate funds only after completing and submitting to the Congress, the report required by section 5(c) of this Act.

(b)(1) The Secretary may not commence construction of the Sykeston Canal, the James River Feeder Canal, and James River channel improvements until the report required by Section 5(c) of this Act has been completed and submitted to the Congress.

(2) The Secretary is directed to proceed immediately with the construction of—

(A) the New Rockford Canal;

(B) the Oakes Test Area; and

(C) project features authorized in Section 7 of this Act.

(c)(1) The Secretary is directed to submit a comprehensive report to the Congress as soon as practicable, but not later than the end of fiscal year 1988 on the effects on the James River in North Dakota and South Dakota of water resource development proposals recommended by the Garrison Diversion Unit Commission and authorized in this Act. The report shall include the findings of the Secretary with regard to:

(A) the feasibility of using the Oakes Aquifer as a water storage and recharge facility, and an evaluation of the need for offstream regulatory storage in the lower James River basin;

(B) the capability of the river to handle irrigation return flows, project water supplies, and natural runoff without causing flooding, property damage, or damage to wildlife areas, and mechanisms or procedures for compensation or reimbursement of affected landowners for damages from project operation;

(C) the impacts of Garrison Diversion Unit irrigation return flows on the river and on adjacent riverine wetland areas and

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components of the National Wildlife Refuge System, with regard to water quantity, water quality, and fish and wildlife values;

(D) the need for channelization of the James River under the irrigation and municipal, rural, and industrial water development programs authorized by this Act;

(E) the cost and efficiency of measures required to guarantee that irrigation return flows from the New Rockford (Robinson Coulee) irrigation service areas will not enter the Hudson Bay drainage and the impact these return flows will have on the James River;

(F) the feasibility of conveying project flows into the lower James River via Pipestem Creek; and

(G) alternative management plans for operation of Jamestown and Pipestem Reservoirs to minimize impacts on the lower James River.

(2) The costs of the study authorized by this subsection shall be nonreimbursable.

(3) The study authorized by this subsection shall be carried out in accordance with the requirements of the National Environmental Policy Act.

(d) The Secretary is prohibited from obligating funds to construct irrigation facilities in the service areas listed in subsection (a)(1) until a contract or contracts, in a form approved by the Secretary, providing for the appropriate payment of the costs allocated to irrigation have been properly executed by a district or districts organized under State law. Such contract or contracts shall be consistent with the requirements of the Reclamation Reform Act of 1982 (Title II, P.L. 97-293, 96 Stat. 1263).

(e) The Secretary is authorized to develop irrigation in the following project service areas within the boundaries of the Fort Berthold and Standing Rock Indian Reservations: Lucky Mound (7,700 acres), Upper Six Mile Creek (7,500 acres), and Fort Yates (2,380 acres), except that, no funds are authorized to be appropriated for construction of these projects until the Secretary has made a finding of irrigability of the lands to receive water as required by the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. 390a). Repayment for the units authorized under this subsection shall be made pursuant to the Leavitt Act (25 U.S.C. 386a).

(f) The Secretary shall not permit the use of project facilities for non-project drainage not included in project design or required for project operations.

SEC. 6. [There is hereby authorized to be appropriated for construction of the Garrison diversion unit as authorized in this Act, the sum of $207,000,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in the construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the unit.] *(a) Municipal, rural, and industrial water systems constructed with funds authorized by section 7 of this Act shall utilize power from the Pick-Sloan Missouri Basin Program, as established by section 9 of the Flood Control Act of 1944 (Act of December 22, 1944), for the operation of such systems.*

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(b) Notwithstanding the provisions of section 302(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7152(a)(3)), any portion of the costs properly chargeable to irrigation for the Garrison Diversion Unit which are beyond the ability of water users to repay as authorized by Reclamation law may be repaid from power revenues, except repayment of investment in irrigation for the Garrison Diversion Unit made after the date of enactment of this Act may not exceed forth years from the year in which irrigation water is first delivered for use by the contracting party and shall be made in equal annual installments.

(c) Pursuant to the provisions of the last sentence of section 302(a)(3) of the Department of Energy Organization Act of 1978 (42 U.S.C. 7152(a)(3)), any reallocation of costs to project purposes other than irrigation as a result of section 1(e) of this Act shall not result in increased rates to Pick-Sloan Missouri Basin Program customers unless: (1) full use has been made of the current development method of ratesetting in analyzing the repayment status and cost allocations for the Garrison Diversion Unit and (2) the resulting rate increase, if any, is made in equal amounts over the ten year period beginning on the date of any such reallocation pursuant to this Act. Costs reallocated to project purposes other than irrigation as a result of section 1(e) of this Act shall be repaid, if reimbursable, with interest at the rate specified in section 4(b) of this Act beginning on the date of any such reallocation without retroactive interest. Nothing in this Act shall alter or affect in any way the current repayment methodology for other features of the Pick-Sloan Missouri Basin Program.

SEC. 7. (a)(1) The Secretary of the Interior is authorized to construct municipal, rural, and industrial water systems to serve areas throughout the State of North Dakota.

(2) All planning, design, construction and operation of the municipal, rural, and industrial water systems authorized by this section shall be undertaken in accordance with a cooperative agreement between the Secretary and the State of North Dakota. Such cooperative agreement shall set forth in a manner acceptable to the Secretary the responsibilities of the State for:

(A) needs assessments;
(B) feasibility studies;
(C) engineering and design;
(D) construction;
(E) operation and maintenance; and,
(F) the administration of contracts pertaining to any of the foregoing.

(3) Upon execution of the cooperative agreement required under this subsection, the Secretary is authorized to convey to the State of North Dakota, on a nonreimbursable basis, the funds authorized in section 10(b)(10 of this Act. The non-Federal share of the total cost of construction of each water system for which the State of North Dakota receives funding pursuant to this section shall be 25 percent, committed prior to the initiation of construction. The non-Federal share of the cost of operation, maintenance, and replacement of each municipal, rural, and industrial water system funded by this section shall be 100 percent. The Southwest Pipeline Project shall be deemed to be eligible for funding under the terms of this section.

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(b) The Secretary is authorized and directed to construct, operate, and maintain a Sheyenne River water supply and release feature (including a water treatment plant) capable of delivering 100 cubic feet per second of water for the cities of Fargo and Grand Forks and surrounding communities. The costs of the construction, operation, maintenance, and replacement of this feature, exclusive of conveyance, shall be nonreimbursable and deemed attributable to meeting requirements of the Boundary Waters Treaty of 1909.

(c) The Secretary is authorized and directed to construct, operate, and maintain such municipal, rural, and industrial water systems as he deems necessary to meet the economic, public health and environmental needs of the Fort Berthold, Standing Rock, and Fort Totten Indian Reservations.

(d) Municipal, rural, and industrial water systems constructed with funds authorized under this Act may deliver Missouri River water into the Hudson Bay drainage only after the Secretary of the Interior, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, has determined that adequate treatment has been provided to meet the requirements of the Boundary Waters Treaty of 1909.

SEC. 8(a)(1) In accordance with the recommendations of the Garrison Diversion Unit Commission Final Report and section 1 of this Act, the Sykeston Canal shall be constructed as a functional replacement for the Lonetree Dam and Reservoir. The Sykeston Canal shall be designed and constructed to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs authorized in this Act. The Sykeston Canal shall be located, constructed, and operated so that, in the opinion of the Secretaries of the Interior and State, no violation of the Boundary Waters Treaty of 1909 would result. The Secretary may not commence construction on the Sykeston Canal until a master repayment contract consistent with the provisions of this Act between the Secretary and the appropriate non-Federal entity has been executed.

(2) The Lonetree Dam and Reservoir shall remain an authorized feature of the Garrison Diversion Unit; however, contstruction funds may be requested by the Secretary for Lonetree Dam and Reservoir only after:

(A) The Secretary has determined that there is a need for the dam and reservoir based on a contemporary appraisal using procedures such as those employed in the preparation of feasibility studies for water resources development projects submitted to Congress;

(B) consultations with the Government of Canada have reached a conclusion satisfactory to the Secretary of State, after consultation with the Administrator of the Environmental Protection Agency, that no violation of the Boundary Waters Treaty of 1909 would result from the construction and operation of the dam and reservoir; and,

(C) the Secretaries of the Interior and State have submitted the determinations required by subparagraphs (A) and (B) above to the Congress and 90 calendar days elapsed.

(b) Taayer Reservoir is deauthorized as a project feature. The Secretary is directed to acquire up to 5,000 acres in the Kraft and Pick-

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ell Slough areas and to manage the area as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and Pickell Slough complex, the Secretary is authorized to acquire wetlands in the immediate vicinity which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the complex. The Secretary is also authorized to provide for appropriate visitor access and control at the refuge.

SEC. 9. Until the construction costs of the facilities authorized in section 5 are repaid, the Secretary is directed to charge a "surplus crop production charge" equal to 10 per cent of full cost, as defined in Section 202(3)(A)-(C) of the Reclamation Reform Act of 1982 (P.L. 97-293, 96 Stat. 1263), for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the surplus crop production charge for the succeeding year on or before July 1 of each year.

SEC. 10. (a) There are authorized to be appropriated $338,305,000 for carrying out the provisions of section 5 and section 8(a)(1) of this Act. Such sums shall remain available until expended.

(b)(1) There is authorized to be appropriated $200,000,000 to carry out the provisions of section 7(a) of this Act. Such sums shall remain available until expended.

(2) There are authorized to be appropriated $61,000,000 to carry out the provisions of section 7(b) through section 7(d) of this Act. Such sums shall remain available until expended.

(c) There is authorized to be appropriated for carrying out the remaining provisions of this Act $80,535,000. No funds are authorized for the construction of the Lonetree Dam and Reservoir. There are also authorized to be appropriated such additional funds as may be necessary for operation and maintenance of the unit.

(d) Any funds previously appropriated for the Garrison Diversion Unit may be expended to carry out any of the provisions of this Act.

SEC. 11. (a) Federal contributions.—From the sums appropriated under Section 10 of this Act for the Garrison Diversion Unit, the Secretary of the Interior shall make an annual Federal contribution to a Wetlands Trust established in accordance with subsection (b), and operated in accordance with subsection (c), of this section. The amount of each such annual contribution shall be as follows:

(1) For fiscal year 1986: $2,000,000.

(2) For each of the fiscal years 1987 through 1990: 3% of the total amount appropriated under Section 10 of this Act, but not to exceed $500,000 for each such fiscal year.

(3) For each fiscal year after 1990: 5% of the total amount appropriated under Section 10 of this Act, but only to the extent that a contribution to the Trust equal to 10% of the Federal contribution is provided or contracted for by the State of North Dakota from non-federal funds. The contributions of the State of North Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary.

(4) The total Federal contribution pursuant to this Act shall not exceed $12,000,000.

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(b) ESTABLISHMENT OF TRUST.—A Wetlands Trust shall be treated as established with this subsection if it complies with each of the following requirements:

(1) The Trust is established as a non-profit corporation under the laws of North Dakota with its principal office in North Dakota.

(2) The Trust is under the direction of a Board of Directors which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board of Directors of the Trust is comprised of 6 persons appointed as follows, each for a term of 2 years:

(A) 3 persons appointed by the Governor of North Dakota.

(B) 1 person appointed by the National Audubon Society.

(C) 1 person appointed by the National Wildlife Federation.

(D) 1 person appointed by the North Dakota Chapter of The Wildlife Society.

Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the Board of Directors is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office.

(4) Members of the Board of Directors serve without compensation.

(5) The corporate purposes of the Trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of North Dakota.

(c) OPERATIONS OF THE TRUST.—A Wetland Trust established as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if each of the following requirements are met:

(1) The Trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of North Dakota in accordance with its corporate purpose as provided in subsection (b)(5).

(2) Pursuant to its corporate charter, the Trust has the authority to exercise each of the following powers:

(A) The power to acquire lands and interests in land and power to acquire water rights. Lands or interests in lands may be acquired by the Trust only with the consent of the owner thereof and with the approval of the Governor of North Dakota.

(B) The power to finance wetland preservation, enhancement, restoration, and management or wetland habitat programs.

(3) All funds received by the Trust under subsection (a) are invested in accordance with the requirements of subsection (d). No part of the principal amount of such funds may be expended for any purpose. The income received by the Trust from the investment of such funds shall be used by the Trust exclusively for its purposes and operations in accordance with this subsec-

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tion or, to the extent not required for current operations, reinvested in accordance with subsection (d).

(4) The Trust agrees to provide such reports as may be required by the Secretary or the Governor of North Dakota and makes its records available for audit by Federal and State agencies.

(d) INVESTMENT OF TRUST FUNDS.—The Secretary of the Interior, in consultation with the Secretary of the Treasury and the Governor of North Dakota, shall establish requirements for the investment of all amounts received by the Trust under subsection (a) or reinvested under subsection (c)(3). Such requirements shall ensure that such amounts are invested in accordance with sound investment principles and shall ensure that persons managing such investments will exercise their fiduciary responsibilities in an appropriate manner.

ACT OF JULY 31, 1953

AN ACT Making appropriations for the Department of the Interior for the fiscal year ending June 30, 1954, and for other purposes (now codified as 43 U.S.C. 390a (1982)).

No part of this or any other provision shall be available for the initiation of construction under the terms of reclamation law of any dam or reservoir or water supply, or any tunnel, canal or conduit for water, or water distribution system related to such dam or reservoir until the Secretary shall certify to the Congress that an adequate soil survey and land classification has been made and that the lands to be irrigated are susceptible to the production of agricultural crops by means of irrigation or that the successful irrigability of those lands and their susceptibility to sustained production of agricultural crops by means of irrigation has been demonstrated in practice. *Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.*

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APPENDIX

Public Law 98-360—Section 207

AN ACT Making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1985, for energy and water development, and for other purposes, namely:

* * * * * * *

SEC. 207. (a) It is the sense of Congress that—

(1) the Garrison Diversion Unit was authorized by Congress and reflects the entitlement of the State of North Dakota to a federally funded water development program as compensation for North Dakota's contributions to the Pick-Sloan Missouri Basin program;

(2) there is a need to put to beneficial use water from the Missouri River within the State of North Dakota;

(3) there are municipal and industrial water resource problems in North Dakota that are presently unmet;

(4) there are irrigation and agricultural water needs in areas which cannot be met by the Garrison Diversion Unit as presently authorized;

(5) the Garrison Diversion Unit, as presently authorized, raises significant issues of economic, environmental, and international concern;

(6) the water needs of the State of North Dakota should be resolved by contemporary water development alternatives; and

(7) a Secretarial commission should be established to examine the water needs of North Dakota and propose development alternatives which will lead to the early resolution of the problems identified.

(b) No funds appropriated under this title for the Garrison Diversion Unit, Pick-Sloan Missouri Basin program, shall be expended or committed for expenditure on construction contracts prior to December 31, 1984. Notwithstanding the preceding sentence, funds appropriated may be expended or committed for expenditure for the work associated with the commission established by this section. Funds may be expended or committed for expenditure after such date for construction of the Garrison Diversion Unit—

(1) in accordance with the recommendations of the Secretarial commission established under subsection (c); or

(2) if the commission fails to make such recommendations, as presently authorized.

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(c)(1) The Secretary of the Interior shall, within thirty days after the date of enactment of this section, appoint a commission, composed of 12 individuals, to review the contemporary water development needs of the State of North Dakota and proposed modifications to the Garrison Diversion Unit consistent with the existing authorization. The Secretary shall designate one member who shall serve as chairman of the commission; who shall set the dates of hearings, meetings, and other offical commission functions in carrying out the purposes of this section. The commission, in developing its recommendations, shall hold no fewer than three public hearings, at least two of which shall be in the State of North Dakota. Any recommendations of the commission shall be agreed to by at least 8 members. The commission shall cease to exist on December 31, 1984.

(2) The commission is directed to examine, review, evaluate, and make recommendations with regard to the contemporary water development needs of the State of North Dakota, taking into consideration—

(A) the costs and benefits incurred and opportunities foregone by the State of North Dakota between 1944 and 1984, as a result of the establishment and implementation of the Pick-Sloan Missouri Basin program;

(B) the need and potential for North Dakota to put to beneficial use within the State water from the Missouri River;

(C) the need for construction of additional facilities to put to beneficial use water from the Missouri River;

(D) the municipal and industrial water needs and development potential within the State of North Dakota, including such matters as—

(i) quality of water supply,

(ii) the ability of existing systems to meet present and future demand,

(iii) related groundwater problems,

(iv) water treatment,

(v) water delivery by pipeline, and

(iv) instream flow needs;

(E) the possible use of groundwater recharge for municipal and industrial uses, as well as irrigation;

(F) the current North Dakota water plan, including proposed projects, to determine if elements of the plan (such as the southwest pipeline project) should be recommended for Federal funding;

(G) whether or not the Garrison Diversion Unit can be redesigned and reformulated;

(H) the institutional and tax equity issues in the State of North Dakota as they relate to the authorized project and alternative water development proposals;

(I) the fiscal and economic impacts of the Garrison Diversion Unit, as compared with alternative proposals for irrigation and municipal and industrial water supply;

(J) the environmental impacts of the water development alternatives mentioned in this section, compared with those of the Garrison Diversion Unit, including impacts on wildlife refuges, wetlands, wildlife habitat, waterfowl, and other environ-

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mental impacts as well as make recommendations to reduce and minimize those impacts; and

(K) the international impacts of the water development alternatives described in this section compared with those of the Garrison Diversion Unit and make recommendations to reduce and minimize those impacts.

All recommendations of the commission shall retain the originally authorized discount rate.

(3) The commission shall submit to the Secretary of the Interior, the chairmen of the Senate Committees on Energy and Natural Resources and Appropriations, and the House Committees on Interior and Insular Affairs and Appropriations, no later than December 31, 1984, a report which contains the conclusions and recommendations of the commission with regard to the items described in paragraph (2).

(d) The Secretary of the Interior is authorized and directed to implement the recommendations of the commission report consistent with existing authority.

(e) Nothing in this section shall affect any litigation initiated prior to June 1, 1984.

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